3–14–96
Vol. 61 No. 51
Pages 10447–10670

federal register

Thursday
March 14, 1996

Briefings on How To Use the Federal Register
For information on briefings in Washington, DC and Raleigh, NC, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Federal Register provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the Federal Register as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the Federal Register shall be judicially noticed.

The Federal Register is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online database is updated by 6 a.m. each day the Federal Register is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su__docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to help@eids05.eids gpo.gov; by faxing to (202) 512–1262; or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

The annual subscription price for the Federal Register paper edition is $494, or $544 for a combined Federal Register, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the Federal Register including the Federal Register Index and LSA is $433. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the Federal Register.

How To Cite This Publication: Use the volume number and the page number. Example: 61 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	202–512–1800
Assistance with public subscriptions	512–1806
General online information	202–512–1530
Single copies/back copies:	
Paper or fiche	512–1800
Assistance with public single copies	512–1803
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	523–5243
Assistance with Federal agency subscriptions	523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

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

WHO: Sponsored by the Office of the Federal Register.

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

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

WASHINGTON, DC

[Two Sessions]

WHEN: March 26, 1996 at 9:00 am
April 23, 1996 at 9:00 am

WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street, NW., Washington, DC (3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

RALEIGH, NC

WHEN: April 16, 1996 at 9:00 am

WHERE: Federal Building and U.S. Courthouse, Room 209, 310 New Bern Avenue, Raleigh, NC 27601

RESERVATIONS: 1–800–688–9889

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register
Vol. 61, No. 51
Thursday, March 14, 1996

Agency for Health Care Policy and Research
NOTICES
Meetings:
Health Care Policy and Research Special Emphasis Panel, 10585

Agricultural Research Service
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Biotechnology Research and Development Corp., 10560

Agriculture Department
See Agricultural Research Service
See Forest Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 10559–10560

Air Force Department
NOTICES
Commercial activities performance (OMB Circular A–76); cost comparison studies, 10564–10565

Army Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 10565–10566
Environmental statements; availability, etc.:
Base realignment and closure—
U.S. Army Aviation Troop Command, MO, et al., 10566
Military traffic management:
Motor freight carrier liability for freight all kinds (FAK) shipments, 10566–10567
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Microsphere drug application device, 10567
Quantitative thrombin time; test, 10567

Centers for Disease Control and Prevention
NOTICES
Meetings:
Injury Prevention and Control Advisory Committee, 10585

Children and Families Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 10583–10584

Coast Guard
RULES
Drawbridge operations:
New York, 10466–10468
Federal regulatory review:
International Regulations for Preventing Collisions at Sea (72 COLREGS); text removed, 10466
PROPOSED RULES
Ports and waterways safety:
Elizabeth River and York River, VA; safety zone, 10493–10494

Commerce Department
See Export Administration Bureau
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 10561

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Poland, 10564

Defense Department
See Air Force Department
See Army Department

Education Department
PROPOSED RULES
Family educational rights and privacy:
Regulatory burden reduction, 10664–10669

Employment and Training Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 10599–10600

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission
NOTICES
Energy conservation:
Alternative fueled vehicle acquisition requirements; implementation, 10567–10568

Energy Efficiency and Renewable Energy Office
RULES
Energy conservation:
Alternative fueled vehicle acquisition requirements; implementation, 10622–10661

Environmental Protection Agency
RULES
Water pollution; effluent guidelines for point source categories:
Fertilizer manufacturing; CFR correction, 10468

Export Administration Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 10561–10562

Federal Aviation Administration
PROPOSED RULES
Airworthiness directives:
Aerospace Technologies of Australia, 10478–10479

Federal Communications Commission
RULES
Common carrier services:
Video-dialtone service—
Open video systems; telephone company/cable television cross-ownership and Section 214 authorization rules; elimination, 10475–10476
PROPOSED RULES
Common carrier services:
Federal-State Joint Board on Universal Service; establishment, 10499–10522
Open video systems; implementation, 10496–10499
Reporting requirements applicable to interexchange carriers, Bell Operating Companies, other local telephone companies and record carriers, 10522–10526

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 10579–10580

Federal Emergency Management Agency
RULES
Flood elevation determinations:
Arizona et al., 10468–10472
Arkansas et al., 10472–10474
Oklahoma, 10474–10475
PROPOSED RULES
Flood elevation determinations:
California et al., 10494–10496
NOTICES
Committees; establishment, renewal, termination, etc.:
National Fire Academy Board of Visitors, 10580

Federal Energy Regulatory Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 10568–10569
Electric rate and corporate regulation filings:
Portland General Electric Co. et al., 10570–10572
Southern California Edison Co. et al., 10572–10574
Environmental statements; availability, etc.:
Aberdeen et al., WA, 10574
Algonquin Gas Transmission Co., 10574–10575
Thunder Bay Power Co., 10576
Hydroelectric applications, 10576–10579
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 10569–10570
Northwest Pipeline Corp., 10570

Federal Highway Administration
PROPOSED RULES
Motor carrier safety standards:
New drivers; safety performance history, 10548–10556
NOTICES
Environmental statements; notice of intent:
Ramsey County, MN, 10616–10617

Federal Maritime Commission
NOTICES
Casualty and nonperformance certificates:
Carnival Corp., 10580
Dolphin Cruise Line, Inc., et al., 10580
Freight forwarder licenses:
Orca International Freight Forwarders Inc. et al., 10580–10581

Federal Railroad Administration
PROPOSED RULES
Railroad workplace safety:
Roadway worker protection, 10528–10548

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 10581
Formations, acquisitions, and mergers, 10581
Permissible nonbanking activities, 10581–10582
Meetings:
Consumer Advisory Council, 10582

Fish and Wildlife Service
PROPOSED RULES
Migratory bird hunting and conservation stamp (Federal Duck Stamp) contest, 10557–10558

Food and Drug Administration
PROPOSED RULES
Food for human consumption:
Food labeling—
Reference daily intakes; correction, 10480–10483
Medical devices:
Analyte specific regents; classification/reclassification as restricted devices, 10484–10489
NOTICES
Human drugs:
Export applications—
ACEL-IMUNE diphtheria-tetanus toxoid (acellular) pertussis vaccine, 10585–10586

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Texas, 10562

Forest Service
NOTICES
Environmental statements; availability, etc.:
Grand Mesa, Uncompahgre and Gunnison National Forests, CO, 10560–10561

Geological Survey
NOTICES
Grant and cooperative agreement awards:
Advanced Resource International, 10590

Health and Human Services Department
See Agency for Health Care Policy and Research
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration
NOTICES
Scientific misconduct findings; administrative actions:
Daubert, Gail L., R.N., 10584–10585

Health Care Financing Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 10586

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Maternal and child health services—
Federal set-aside program, etc., 10586–10589

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Public and Indian housing—
Emergency shelter set-aside for Indian tribes and Alaskan native villages; application deadline extension, 10589–10590

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Land Management Bureau

Internal Revenue Service
RULES
Excise taxes:
Gasoline and diesel fuel registration requirements, 10450–10466
Income taxes:
Consolidated groups—
Intercompany transactions and related rules, 10447–10450
PROPOSED RULES
Excise taxes:
Gasoline; sale or removal and tax bond requirements; withdrawn, 10492–10493
Gasoline and diesel fuel dye injection systems, 10490–10492
Income taxes:
Employee's accrued benefits calculation; qualified benefit pension plan contributions; correction, 10489
NOTICES
Agency information collection activities:
Proposed collection; comment request, 10617–10618

International Trade Administration
NOTICES
Antidumping:
Grey portland cement and clinker from—
Mexico, 10562–10563
Internal-combustion, industrial forklift trucks from—
Japan, 10562
Solid urea from—
German Democratic Republic, 10563

International Trade Commission
NOTICES
Import investigations:
Monolithic microwave integrated circuit downconverters and products containing same, including low noise block downconverters, 10595–10596
Sodium azide from—
Japan, 10596

Justice Department
NOTICES
Pollution control; consent judgments:
Allied Signal, Inc., et al., 10596
Burrows, Elmer, et al., 10596–10597
Crown Paper Co. et al., 10597–10598
Elliott Drywall & Asbestos, Inc., 10598
Mobil Mining & Minerals Co., 10598
Municipal Authority of Union Township et al., 10598–10599

Labor Department
See Employment and Training Administration
See Occupational Safety and Health Administration
NOTICES
Meetings:
National Skill Standards Board, 10599

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
Lower Deschutes River management plan, OR, 10590
Meetings:
Arizona Resource Advisory Council, 10590–10591
Front Range Resource Advisory Council, 10591
Gila Box Riparian National Conservation Area Advisory Committee, 10591
New Mexico Resource Advisory Council, 10591–10592
Public land orders:
Alaska, 10592
Colorado, 10592–10593
Realty actions; sales, leases, etc.:
Arizona, 10593
Oregon, 10593–10594
Resource management plans, etc.:
Cedar-Beaver-Garfield-Antimony Resource Area et al., UT, 10594
Survey plat filings:
Arkansas, 10594
Oregon and Washington, 10594–10595

Maritime Administration
NOTICES
Applications, hearings, determinations, etc.:
American President Lines, Ltd., 10617

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
Front stop lamps; petition denied, 10556–10557

National Oceanic and Atmospheric Administration
RULES
Endangered and threatened species:
Exceptions to prohibitions; CFR correction, 10477
NOTICES
Meetings:
Gulf of Mexico Fishery Management Council, 10563
North Pacific Fishery Management Council, 10563–10564

Nuclear Regulatory Commission
NOTICES
Pressurized water reactors; control rod insertion problems, 10601
Applications, hearings, determinations, etc.:
Cleveland Electric Illuminating Co. et al.; correction, 10600–10601
Washington Public Power Supply System; correction, 10601

Occupational Safety and Health Administration
NOTICES
Meetings:
Construction Safety and Health Advisory Committee, 10600

Personnel Management Office
NOTICES
Excepted service:
Schedules A, B, and C; positions placed or revoked—Update, 10601–10602

Public Health Service
See Agency for Health Care Policy and Research
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration

Research and Special Programs Administration
RULES
Drug and alcohol testing:
Alcohol misuse prevention program; guidelines and interpretations, 10477
NOTICES
Alcohol misuse prevention program:
Control of drug use and alcohol misuse in natural gas, liquefied natural gas, and hazardous liquid pipeline operations; correction, 10617

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 10605–10606
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 10606–10614
Government Securities Clearing Corp., 10614–10615
Applications, hearings, determinations, etc.:
Flex-Partners et al., 10602–10604
Public utility holding company filings, 10604–10605

Social Security Administration
NOTICES
Social security; foreign insurance or pension system:
Croatia, 10615–10616

State Department
RULES
Foreign missions protection guidelines; CFR part removed, 10447
NOTICES
Meetings:
International Telecommunications Advisory Committee, 10616

Surface Transportation Board
PROPOSED RULES
Practice and procedure:
Pipeline common carriers; rate change and other service terms; disclosure and notice, 10526–10528

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See Maritime Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
See Surface Transportation Board

Treasury Department
See Internal Revenue Service

United States Information Agency
NOTICES
Art objects; importation for exhibition:
Jan Steen: Painter and Storyteller, 10618–10619

Veterans Affairs Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 10619
Grants and cooperative agreements; availability, etc.:
Homeless providers grant and per diem program, 10619–10620
Meetings:
Medical Research Service Merit Review Committee, 10620

Separate Parts In This Issue

Part II
Department of Energy, Energy Efficiency and Renewable Energy Office, 10622–10661

Part III
Department of Education, 10664–10669

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

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

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.

10 CFR
490.....10622

14 CFR
Proposed Rules:
39.....10478

21 CFR
Proposed Rules:
101.....10480
809.....10480
864.....10480

22 CFR
2a.....10447

26 CFR
1.....10447
40.....10450
42.....10450
48.....10450
602.....10450
Proposed Rules:
1.....10489
48 (2 documents) 10490, 10492
301.....10492
602.....10492

33 CFR
Subchapter D.....10466
81.....10466
117.....10466
Proposed Rules:
165.....10493

34 CFR
Proposed Rules:
99.....10664

40 CFR
418.....10468

44 CFR
65 (2 documents) 10468, 10472
67.....10474
Proposed Rules:
67.....10494

47 CFR
63.....10475
Proposed Rules:
Ch. I.....10496
36.....10499
43.....10522
63.....10522
64.....10522
65.....10522
69.....10499

49 CFR
199.....10477
Proposed Rules:
214.....10528
382.....10548
383.....10548
390.....10548
391.....10548
571.....10556
Ch. X.....10526

50 CFR
227.....10477
Proposed Rules:
91.....10557

Rules and Regulations

Federal Register
Vol. 61, No. 51
Thursday, March 14, 1996

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

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

DEPARTMENT OF STATE

22 CFR Part 2a

[Public Notice 2305]

Repeal of Department of State Guidelines on Protection of Foreign Missions in the United States

AGENCY: Bureau of Diplomatic Security, State.

ACTION: Direct final rule.

SUMMARY: The Department of State is repealing 22 CFR part 2a, relating to its protective security program for the protection of foreign missions in the United States because these regulations are outdated and unnecessary.

DATES: This direct final rule is effective May 13, 1996, unless the State Department receives adverse or critical comments by April 15, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Interested persons are invited to submit comments in duplicate to the Assistant Legal Adviser for Legislation and General Management, Office of the Legal Adviser, Department of State, Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Mary Beth West, Assistant Legal Adviser for Legislation and General Management, (202) 647–5154.

SUPPLEMENTARY INFORMATION: This rule repeals 22 CFR part 2a, relating to the Department of State's protective security program for the protection of foreign missions in the United States. The Department is not changing the program itself, which provides, among other things, for the reimbursement of certain local government agencies for certain protective services. Rather, the Department is eliminating the regulations because they have become outdated and unnecessary in light of the Cooperative Agreements, setting forth the program's operative procedures, into which the local government agencies that participate in the program all enter with the Department of State.

To ensure the proper administration of this program, the Department of State is expanding its internal regulation in its Foreign Affairs Manual on this subject. The rule does not directly affect the public. Accordingly, this rule is unlikely to engender public comment.

The implementation of this rule as a direct final rule, with provision for post-promulgation comment, is based upon the ''good cause'' exception found at 5 U.S.C. 553(d)(3). Because this rule does not change the program or its administration, it is not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Neither the regulations which would be eliminated, nor the absence of such regulations, constitute a Federal intergovernmental mandate under the Unfunded Mandates Act (Public Law 104–4) since local government agencies voluntarily participate in the Federal assistance program. In addition, this rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act of 1980. This rule has been reviewed as required by Executive Order 12778 and certified to be in compliance therewith. This rule is exempt from review under Executive Order 12866, but has been reviewed internally by the Department to ensure consistency with the objectives thereof.

List of Subjects in 22 CFR Part 2a

Foreign officials, Intergovernmental relations, Security measures.

Accordingly, under the Authority 22 U.S.C. 2651a(4), 22 CFR part 2a is removed.

Dated: December 12, 1995.

Anthony C.E. Quainton,

Assistant Secretary for Diplomatic Security.

[FR Doc. 96–5859 Filed 3–13–96; 8:45 am]

BILLING CODE 4710–08–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8660]

RIN 1545–AT51

Consolidated Groups—Intercompany Transactions and Related Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations disallowing losses and excluding gain for certain dispositions and other transactions involving stock of the common parent of a consolidated group.

DATES: These regulations are effective March 14, 1996.

For dates of applicability, see the effective date provision of these regulations.

FOR FURTHER INFORMATION CONTACT: Victor Penico or Richard Osborne of the Office of Assistant Chief Counsel (Corporate), (202) 622–7750 or (202) 622–7770 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1433. Responses to these collections of information are required to obtain a benefit, the avoidance of a possible gain because of basis adjustments relating to built-in loss.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated average annual burden per respondent is 15 minutes.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and

Regulatory Affairs, Washington, D.C. 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On July 12, 1995, the IRS and Treasury issued proposed and temporary regulations disallowing loss incurred by a member (M) of a consolidated group with respect to the stock of the common parent (P stock). The regulations also eliminate gain in certain transactions by M with respect to P stock. The regulations are effective for transactions occurring on or after July 12, 1995.

The IRS received comments on the proposed regulations and held a public hearing on December 11, 1995. After consideration of the comments and the statements made at the hearing, the IRS and Treasury adopt the proposed regulations with revisions in this Treasury decision. The significant comments and changes are discussed below.

Explanation of Provisions

Scope of the regulations

The proposed regulations disallow all losses on P stock and eliminate gain in specified circumstances. Some commentators suggested that the regulations should treat gain and loss more symmetrically. Some suggested the regulations should achieve this goal by eliminating gain in all circumstances. Others suggested the regulations should disallow loss only in ''abusive'' circumstances.

Eliminating gain in all circumstances would effectively require complete single entity treatment of P stock. Implementing such a system would significantly increase the complexity of the consolidated return regulations. Notice 94–49 (1994–1 C.B. 358), included a detailed discussion of issues relating to the single entity treatment of P stock.

Limiting the loss disallowance rule to ''abusive situations'' would allow consolidated groups to rely on the separate-entity treatment of stock to claim losses and single-entity treatment to avoid gains. For example, taxpayers might plan to take advantage of separate entity treatment by having M purchase P stock. If the value of the stock has gone down at a time when the group wants to issue equity, M will sell its P stock at a loss (and claim the loss). If the value of the stock has gone up, the group can take advantage of single entity treatment by having P sell the stock, and no gain would be recognized under section 1032. The same would hold true if instead P had acquired M already owning P stock. Commentators did not suggest any generally applicable method of distinguishing between transactions in which loss should be allowed and those in which loss should not be allowed.

The IRS and Treasury have therefore concluded that the final regulations should retain the general approach of the proposed regulations.

Built-in Losses

Some commentators suggested that if M joins the group at a time when it holds P stock with a built-in loss the loss should be allowed because it accrued outside the group. The final regulations do not allow this loss because doing so without ensuring that the built-in gain is taxed would allow the same selectivity and inconsistencies that the regulation is designed to prevent. In addition, allowing the loss would require tracing, which is inconsistent with the approaches to similar issues in §§ 1.1502–20 and 1.1502–32.

Commentators further suggested that interactions between the proposed regulations and § 1.1502–32 could cause the group to recognize an artificial gain from the purchase of a corporation owning depreciated P stock. If M joins the group at a time when it holds P stock with a built-in loss and M subsequently sells the stock, P will have a downward basis adjustment in its M stock because of the disallowed loss. See § 1.1502–32(b)(3)(iii)(A). The commentators asserted that this basis adjustment would be inappropriate if the group has a cost basis in M stock because the basis of M will reflect the value of the P stock at the time of acquisition (rather than M's basis in the P stock). To address this problem, the final regulations allow the built-in loss to be waived immediately before M joins the group. The loss waiver is modeled after a similar provision in § 1.1502–32(b)(4). The election, however, is limited to direct acquisitions of a corporation holding P stock in a cost basis transaction.

Gain Relief

Commentators suggested that the gain relief should be broadened. Some suggested that the requirement that M receive the P stock in a capital contribution or section 351(a) transaction be eliminated. Others suggested elimination of the requirement that M dispose of the P stock immediately. Commentators also suggested that the gain relief should apply to options and warrants in P stock, and not merely to P stock.

The final regulations retain the requirements for gain relief but extend the relief to positions in P stock. Any further expansion of the gain relief would require additional limitations and complexities.

For instance, if M were not required to dispose of the P stock immediately, the regulations would have to require that M have no minority shareholders. If M had minority shareholders, the gain relief mechanism (treating cash as contributed to M followed by a purchase of the stock by M) would allow P a full basis adjustment in M stock for post-contribution appreciation rather than a pro rata adjustment as required by § 1.1502–32 in the case of minority shareholders. Amending the mechanism to allow only pro rata adjustments (for example, through a direct basis adjustment rather than a cash transaction) would create further complexities, such as the interaction with § 1.1502–20.

Expanding gain relief would require further adjustments if M stock were sold to another member of the group. For example, if B purchases the stock of M from another member, B's basis in M will reflect the value of any P stock held by M. Thus, an increase to B's basis in the stock of M when M disposes of P stock would be unwarranted. Additional special rules would be needed if M were permitted to acquire P stock by purchase rather than through a capital contribution. Moreover, the IRS and Treasury believe that in many cases gain on P stock is avoidable without further expansion of the regulations. See, e.g., § 1.1032–2(b) (no gain or loss on M's use of certain P stock in triangular reorganizations). Therefore, the final regulations retain the requirements of the proposed regulations for gain relief.

In addition, commentators claimed that the relief when M is newly formed was unclear. The final regulations clarify that M can be newly formed as part of the plan to dispose of P stock.

Dealers in P Stock

Some commentators suggested that if a subsidiary is a dealer in P stock, it should be allowed to recognize losses from its dealing activity. They argued that dealing in P stock increases the liquidity of the stock and that the proposed regulations would curtail this activity by forcing the recognition of gain but disallowing loss with respect to P stock.

In response to these comments, the final regulations include an exception for dealers in P stock or positions in P stock. Under the final regulations, a dealer in P stock or positions recognizes both gain and loss on shares of the stock to the extent taken into account because of section 475(a) (or 1256(a) in the case of dealer equity options). To be eligible for this exception, M must regularly trade in P stock (of the same class) in the ordinary course of its business as a dealer. In addition, the gain or loss on a share is eligible only to the extent it is taken into account under section 475(a) (or in the case of dealer equity options, section 1256(a) to the extent that it would be taken into account under the principles of section 475), and the basis of the share of stock must not be adjusted by reference to the basis of any other property (for example, under § 1.302–2) or by reference to income, gain, deduction or loss from other property. For example, loss that is suspended under section 475(b)(3) and that is recognized under section 1001 as the result of a disposition of the security is not eligible for the relief, but loss taken into account under section 475(a) immediately before a taxpayer ceases to be the owner of the security is eligible for relief. Finally, relief is not available if either M or any other member of the group has structured or engaged in any transaction while a member (or in anticipation of becoming a member) during the taxable year or in any year within the preceding five taxable years that is open for assessment under section 6501 with a principal purpose of avoiding gain or creating loss on P stock subject to section 475(a).

Positions in P Stock

In response to comments, the final regulations clarify that the scope of loss disallowance is coextensive with the scope of section 1032. For example, cash-settled options are within the scope of loss disallowance. See Rev. Rul. 88–31 (1988–1 C.B. 302). No inference is intended as to the extent to which section 1032 and these regulations apply to derivative positions in P stock other than options.

One commentator argued that the loss disallowance rule should not apply to options in P stock because the selectivity available for stock is not present with respect to options. The final regulations do not adopt this approach. If M purchases an option to acquire P stock and the option expires when it is worthless, M has a loss. If the option is in the money, M can purchase the P stock and hold it indefinitely. Thus, the group would have the ability to recognize losses while avoiding gains.

Effective Dates

The final regulations apply to gain or loss taken into account on or after July 12, 1995, and to transactions (such as a member leaving the group) occurring on or after July 12, 1995. Thus, the regulations are intended to cover the same gain, loss and transactions covered by the rules published in 1995—32 I.R.B. 47. If, however, a taxpayer takes a gain or loss into account, or engages in a transaction, on or after July 12, 1995, during a tax year ending prior to December 31, 1995, the taxpayer may treat the gain, loss or transaction under the rules of the temporary rules published in 1995—32 I.R.B. 47 instead of under the rules of the final regulations.

Special Analysis

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations do not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect affiliated groups of corporations that have elected to file consolidated returns, which tend to be larger businesses. The regulations do not significantly alter the reporting or recordkeeping duties of small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by revising the entry for § 1.1502–13 to read as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.1502–13 also issued under 26 U.S.C. 1502. * * *

Par. 2. In § 1.267(f)–1(k), the first sentence is amended by removing the reference ''1.1502–13T(f)(6)'' and adding ''1.1502–13(f)(6)'' in its place.

Par. 3. Section 1.1502–13(f)(6) is added to read as follows:

§ 1.1502–13 Intercompany transactions.

* * * * *

(f) * * *

(6) *Stock of common parent.* In addition to the general rules of this section, this paragraph (f)(6) applies to parent stock (P stock) and positions in P stock held or entered into by another member. For this purpose, P stock is any stock of the common parent held by another member or any stock of a member (the issuer) that was the common parent if the stock was held by another member while the issuer was the common parent.

(i) *Loss stock*—(A) *Recognized loss.* Any loss recognized, directly or indirectly, by a member with respect to P stock is permanently disallowed and does not reduce earnings and profits. See § 1.1502–32(b)(3)(iii)(A) for a corresponding reduction in the basis of the member's stock.

(B) *Other cases.* If a member, M, owns P stock, the stock is subsequently owned by a nonmember, and, immediately before the stock is owned by the nonmember, M's basis in the share exceeds its fair market value, then, to the extent paragraph (f)(6)(i)(A) of this section does not apply, M's basis in the share is reduced to the share's fair market value immediately before the share is held by the nonmember. For example, if M owns shares of P stock with a $100x basis and M becomes a nonmember at a time when the P shares have a value of $60x, M's basis in the P shares is reduced to $60x immediately before M becomes a nonmember. Similarly, if M contributes the P stock to a nonmember in a transaction subject to section 351, M's basis in the shares is reduced to $60x immediately before the contribution. See § 1.1502–32(b)(3)(iii)(B) for a corresponding reduction in the basis of M's stock.

(C) *Waiver of built-in loss on P stock—(1) In general.* If a nonmember that owns P stock with a basis in excess of its fair market value becomes a member of the P consolidated group in a qualifying cost basis transaction, the group may make an irrevocable election to reduce the basis of the P stock to its fair market value immediately before the nonmember becomes a member of the P group. If the nonmember was a member of another consolidated group immediately before becoming a member of the P group, the reduction in basis is treated as occurring immediately after it ceases to be a member of the prior group. A qualifying cost basis transaction is the purchase (i.e., a transaction in which basis is determined

under section 1012) by members of the P consolidated group (while they are members) in a 12-month period of an amount of the nonmember's stock satisfying the requirements of section 1504(a)(2).

(*2*) *Election*. The election described in this paragraph (6)(i)(C) must be made in a separate statement entitled ''ELECTION TO REDUCE BASIS OF P STOCK UNDER § 1.1502–13(f)(6).'' The statement must be filed with the P consolidated group's return for the year in which the nonmember becomes a member, and it must be signed by both P and the nonmember. The statement must identify the fair market value of, and the amount of the basis reduction in, the P stock.

(ii) *Gain stock*. If a member, M, would otherwise recognize gain on a qualified disposition of P stock, then immediately before the qualified disposition, M is treated as purchasing the P stock from P for fair market value with cash contributed to M by P (or, if necessary, through any intermediate members). A disposition is a qualified disposition only if—

(A) The member acquires the P stock directly from the common parent (P) through a contribution to capital or a transaction qualifying under section 351(a) (or, if necessary, through a series of such transactions involving only members);

(B) Pursuant to a plan, the member transfers the stock immediately to a nonmember that is not related, within the meaning of section 267(b) or 707(b), to any member of the group;

(C) No nonmember receives a substituted basis in the stock within the meaning of section 7701(a)(42);

(D) The P stock is not exchanged for P stock;

(E) P neither becomes nor ceases to be the common parent as part of, or in contemplation of, the disposition or plan; and

(F) M is neither a nonmember that becomes a member nor a member that becomes a nonmember as part of, or in contemplation of, the disposition or plan.

(iii) *Mark-to-market of P stock*. Paragraphs (f)(6)(i) and (ii) of this section shall not apply to any gain or loss from a share of P stock held by a member, M, if—

(A) M regularly trades in P stock (of the same class) with customers in the ordinary course of its business as a dealer;

(B) The gain or loss on the share is taken into account by M pursuant to section 475(a);

(C) M's basis in the share is not adjusted by reference to the basis of any other property or by reference to income, gain, deduction, or loss from other property; and

(D) Neither M nor any other member of the group has structured or engaged in any transaction while a member (or in anticipation of becoming a member), during the taxable year or in any year within the preceding five taxable years that is open for assessment under section 6501, with a principal purpose of avoiding gain or creating loss on P stock subject to section 475(a).

(iv) *Options, warrants, and other positions*—(A) *In general.* This paragraph (f)(6) applies with appropriate adjustments to positions in P stock to the extent that P's gain or loss from an equivalent position would not be recognized under section 1032. Thus, if M purchases an option to buy or sell P stock and sells the option at a loss, the loss is permanently disallowed under paragraph (f)(6)(i)(A) of this section. Similarly, if M is the grantor of such an option and becomes a nonmember, then the principles of paragraph (f)(6)(i)(B) of this section apply to the extent that M would recognize loss from cash settlement of the option at its fair market value immediately before M becomes a nonmember, and proper adjustments must be made in the amount of any gain or loss subsequently realized from the position by M. If P grants M an option to acquire P stock in a transaction meeting the requirements of paragraph (f)(6)(ii) of this section, M is treated as having purchased the option from P for fair market value with cash contributed to M by P.

(B) *Mark-to-market of positions in P stock*. For purposes of paragraph (f)(6)(iii) of this section, gain or loss with respect to a position taken into account under section 1256(a) is treated as taken into account under section 475(a) to the extent that the gain or loss would be taken into account under the principles of section 475.

(v) *Effective date*. This paragraph (f)(6) applies to gain or loss taken into account on or after July 12, 1995, and to transactions occurring on or after July 12, 1995. For example, if S sells P stock to B at a loss prior to July 12, 1995, and B sells the P stock to a nonmember after July 12, 1995, S's loss is disallowed because it is taken into account after July 12, 1995. If a taxpayer takes a gain or loss into account or engages in a transaction on or after July 12, 1995, during a tax year ending prior to December 31, 1995, the taxpayer may treat the gain or loss or the transaction under the rules published in 1995–32 I.R.B. 47, instead of under the rules of this paragraph (f)(6).

* * * * *

Par. 4. In § 1.1502–13(g)(2)(i)(B), the last sentence is amended by removing the language ''paragraph (f)(4) of this section and § 1.1502–13T(f)(6)'' and adding ''paragraphs (f)(4) and (6) of this section.''

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: March 8, 1996.

Leslie Samuels,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 96–6151 Filed 3–13–96; 8:45 am]

BILLING CODE 4830–01–P

---

26 CFR Parts 40, 42, 48, and 602

[TD 8659]

RIN 1545–AR92

Gasoline and Diesel Fuel Excise Tax; Registration Requirements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the taxes on gasoline and diesel fuel. This document also removes obsolete excise tax regulations. The regulations reflect and implement certain changes made by the Omnibus Budget Reconciliation Act of 1990 and the Omnibus Budget Reconciliation Act of 1993 (the 1993 Act). The regulations affect certain blenders, enterers, industrial users, refiners, terminal operators, and throughputters. The regulations also affect certain persons that sell, buy, or use diesel fuel for a nontaxable use.

EFFECTIVE DATE: These regulations are effective March 14, 1996.

FOR FURTHER INFORMATION CONTACT: Frank Boland (202) 622–3130 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1418. Responses to this collection of information are mandatory and are required to obtain certain credits or payments.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

unless the collection of information displays a valid control number.

The estimated average annual reporting burden per respondent is .1 hour.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books and records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

The Diesel Fuel Regulations

Before 1994, the diesel fuel tax applied to sales of diesel fuel by importers or producers (including registered wholesale distributors). Because of concerns that this system fostered considerable tax evasion, Congress made significant changes to the tax in the 1993 Act. Effective January 1, 1994, tax is imposed on diesel fuel when it is removed at the terminal rack, and diesel fuel may be removed tax free only if the fuel contains a prescribed type and amount of dye. These changes made the taxing point readily identifiable, required untaxed fuel to be physically identified (that is, dyed), and reduced the number of taxpayers.

Temporary regulations (TD 8496) relating to these changes (the diesel fuel regulations) were published in the Federal Register on November 30, 1993 (58 FR 63069), along with a notice of proposed rulemaking (PS–52–93) cross-referencing the temporary regulations (58 FR 63131). Amendments to these temporary regulations (TD 8512) relating to dye color and concentration were published in the Federal Register on December 27, 1993 (58 FR 68304), along with a notice of proposed rulemaking (PS–76–93) cross-referencing those amendments (58 FR 68338). Written comments responding to the proposed diesel fuel regulations were received and a public hearing was held on March 22, 1994. Final regulations (TD 8550) relating to dye color and concentration were published in the Federal Register on June 30, 1994 (59 FR 33656).

The Conforming Regulations

On October 19, 1994, the IRS published in the Federal Register (59 FR 52735) proposed regulations (PS–66–93) that generally consolidate the rules relating to the gasoline tax and the diesel fuel tax into a single set of rules applicable to both fuels (the conforming regulations). The conforming regulations also proposed rules relating to gasohol and compressed natural gas.

Written comments regarding the proposed conforming regulations were received and a public hearing was held on January 11, 1995.

Final regulations (TD 8609) relating to gasohol and compressed natural gas were published in the Federal Register on August 7, 1995 (60 FR 40079).

The Final Regulations

After consideration of written comments and comments made at the public hearings, the proposed diesel fuel regulations and the proposed conforming regulations are adopted as revised by this Treasury decision. Comments and revisions are discussed below.

Significant Issues Raised in Comments and Changes Made in the Final Regulations

Treatment of Kerosene

The temporary diesel fuel regulations provide that kerosene would not be treated as diesel fuel before July 1, 1994, and invited comments on the treatment of kerosene after June 30, 1994. Notice 94–72 (1994–2 C.B. 553) informed taxpayers that the IRS was reviewing this issue and would not change the treatment of kerosene until the issuance of further guidance. The IRS is continuing its review of this issue. Accordingly, the final regulations do not treat kerosene as diesel fuel.

Because kerosene is not treated as diesel fuel, a person that adds kerosene to diesel fuel outside of the bulk transfer/terminal system generally must pay tax on the added kerosene and must be registered by the IRS.

Removal From Certain Refineries

The temporary diesel fuel regulations provide that tax is not imposed on the removal of undyed diesel fuel from an approved refinery for delivery to an approved terminal if the fuel is removed by rail car, the refinery and the terminal are operated by the same taxable fuel registrant, and the refinery is not served by pipeline or vessel.

One commentator noted that one of its refineries is not serviced by pipeline, vessel, or rail. In response to this comment, the final regulations expand this rule so that diesel fuel also may be removed tax free from an approved refinery that is not served by pipeline, vessel, or rail if the removal is by a trailer or semi-trailer and additional prescribed conditions are met.

Notice Relating to Sales and Removals of Dyed Diesel Fuel

The temporary diesel fuel regulations provide that terminal operators and others who sell dyed diesel fuel are responsible for informing their customers that the dyed fuel cannot be used for a taxable purpose and that a penalty may be imposed for taxable use (the notice requirement). Any person that fails to comply with the notice requirement is, for purposes of the penalty for misuse of dyed fuel imposed by section 6714, presumed to know that the dyed diesel fuel will not be used for a nontaxable use.

Under the final regulations, only terminal operators and certain retail sellers will be subject to the notice requirement. A terminal operator must comply with the notice requirement as one of the terms and conditions of its registration.

Visual Inspection Devices

The temporary diesel fuel regulations do not require the use of visual inspection devices and the final regulations continue this policy. The IRS will continue to evaluate the need for regulations addressing this issue. However, the use of visual inspection devices is encouraged so that the buyers and sellers of diesel fuel may readily determine whether the fuel may be used for a taxable use.

Back-Up Tax; Trains

A tax is imposed on the delivery of dyed diesel fuel into the fuel supply tank of a diesel-powered train. Under the temporary diesel fuel regulations, the operator of the train into which dyed fuel is delivered is liable for the tax.

Several commentators noted that a prevalent practice in the railroad industry is for one railroad's locomotives to be used to pull freight on another's track and to be fueled by the railroad that owns the track. In these situations, the identity of the operator is unclear.

In response to these comments, the final regulations provide that the person that delivers dyed diesel fuel into the fuel supply tank of a train is liable for the tax under certain prescribed conditions.

Credits and Payments

Information To Be Submitted With Claims

If undyed diesel fuel is used in a nontaxable use, a credit or payment is allowable to either (1) the ultimate purchaser or (2) in the case of diesel fuel used on a farm for farming purposes or by a State or local government, the registered ultimate vendor of the fuel. The temporary diesel fuel regulations prescribe the information that must be submitted to the IRS to support claims for these credits or payments.

Several commentators asserted that the information requirements in the diesel fuel temporary regulations are too burdensome. In response to these comments, the final regulations reduce the paperwork requirements for claimants by eliminating certain items from the list of required submissions. However, the paperwork requirements may be changed in the future if the IRS determines that additional information is necessary for effective enforcement of the tax.

Notice 94–61

Notice 94–61 (1994–1 C.B. 371) announced that the temporary diesel fuel regulations would be revised to clarify that (1) a registered ultimate vendor is the only person allowed a credit or payment with respect to diesel fuel used on a farm for farming purposes or by State or local governments, and (2) a credit or payment generally is allowed to a registered ultimate vendor who sells undyed diesel fuel to a custom harvester for use on a farm for farming purposes. The final regulations contain these revisions.

Undyed Diesel Fuel Mixed With Dyed Diesel Fuel

One condition for the allowance of a credit or payment under section 6427 is that tax must have been imposed on the diesel fuel to which the claim relates. Because untaxed diesel fuel is dyed, the temporary diesel fuel regulations require each claim to be accompanied by a statement that the diesel fuel covered by a claim did not contain visible evidence of dye.

On rare occasions, however, an amount of taxed diesel fuel may contain visible evidence of dye. This may occur, for example, when dyed diesel fuel and undyed diesel fuel are mixed together by a fuel marketer or user who accidentally delivers one type of fuel into a storage tank that already contains the other type of fuel.

The final regulations provide that each claim must be accompanied by a statement that tax has been imposed on the diesel fuel covered by a claim. Generally, this requirement will be met by a claimant's statement that the diesel fuel did not contain visible evidence of dye. However, for claims involving taxed fuel that has been mixed with dyed fuel, the claimant (that is, the ultimate purchaser or the registered ultimate vendor) cannot make such a statement. For these claims, the claimant must submit other evidence showing that the diesel fuel covered by the claim has been subject to tax. This evidence might include a statement from the person that produced the undyed/dyed fuel mixture explaining how the mixing occurred or a statement from the claimant (if the claimant did not produce the mixture) that explains when and from whom the claimant acquired the mixture. As with all claims, these claims are subject to review by the IRS before they are allowed.

Section 6714—Penalty

Section 6714(a)(3) provides that if any person willfully alters, or attempts to alter, the strength or composition of any dye or marking done pursuant to section 4082 in any dyed fuel, then such person shall pay a penalty in addition to the tax (if any).

Notice 94–21 (1994–1 C.B. 339) describes three situations in which the section 6714(a)(3) penalty does not apply. The final regulations incorporate the substance of the Notice. In addition, the final regulations provide that the section 6714(a)(3) penalty does not apply if dyed diesel fuel is blended with undyed diesel fuel and the blending occurs as part of an exempt or partially exempt (that is, bus or train) use. Thus, for example, the section 6714(a)(3) penalty does not apply if dyed and undyed diesel fuel are blended together in the fuel supply tank of a nonhighway vehicle such as a bulldozer or farm tractor.

Dye Injection Systems and Markers

The final regulations do not require the use of dye injection systems or markers. These topics will be addressed in a future notice of proposed rulemaking.

Effect on Other Documents

The following publications are obsolete as of March 14, 1996:

Rev. Rul. 72–213, 1972–1 C.B. 328.
Rev. Proc. 73–21, 1973–2 C.B. 471.
Notice 88–26, 1988–1 C.B. 495.
Notice 89–17, 1989–1 C.B. 647.
Notice 94–18, 1994–1 C.B. 338.
Notice 94–21, 1994–1 C.B. 339.
Notice 94–61, 1994–1 C.B. 371.
Notice 94–72, 1994–2 C.B. 553.

Special Analyses

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

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

List of Subjects

26 CFR Parts 40, 42, and 48

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, under the authority of 26 U.S.C. 7805, chapter I is amended as follows:

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

Paragraph 1. The authority citation for part 40 is amended by removing the entry for sections 40.6011(a)–1, 40.6011(a)–2, and 40.6011(a)–3T and adding entries in numerical order to read in part as follows:

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

Section 40.6011(a)–1 also issued under 26 U.S.C. 6011(a).

Section 40.6011(a)–2 also issued under 26 U.S.C. 6011(a). * * *

Par. 2. Section 40.6011(a)–1(b) is amended by:

1. Redesignating the text of paragraph (b) following the heading as paragraph (b)(1) and adding a heading for newly designated paragraph (b)(1).

2. Adding paragraph (b)(2).

The additions read as follows:

§ 40.6011(a)-1 Returns.

* * * * *

(b) * * * (1) *In general.* * * *

(2) *Certain persons liable for tax on taxable fuel.* Effective January 1, 1994, the district director may require a person to make a return of tax for a monthly or semimonthly period in the manner prescribed in paragraph (b)(1) of this section if the person—

(i) Is a bonded registrant (as defined in § 48.4101–1(b) of this chapter) at any time during the period;

(ii) Has been registered under section 4101 for less than one year at the beginning of the period;

(iii) Meets the acceptable risk test of § 48.4101–1(f)(3) of this chapter by reason of § 48.4101–1(f)(3)(i)(B) of this chapter at any time during the period;

(iv) Has failed to comply with the applicable provisions of § 48.4101–1(h) of this chapter (relating to the terms and conditions of registration);

(v) Is liable for tax under § 48.4082–4(a) of this chapter (relating to the back-up tax on diesel fuel) at any time during the period; or

(vi) Is liable for tax under section 4081 (relating to the tax on taxable fuel) at any time during the period and is not a taxable fuel registrant at that time.

* * * * *

§ 40.6011(a)–3T [Removed]

Par. 3. Section 40.6011(a)–3T is removed.

PART 42—[REMOVED]

Par. 4. Part 42 is removed.

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

Par. 5. The authority citation for part 48 is amended by removing the entries for sections 48.4081–4, 48.4082–1 and 48.4082–2T, 48.4101–3T, 48.4101–4T, 48.6427–8T and 48.6427–9T, and adding entries in numerical order to read in part as follows:

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

Section 48.4081–4 also issued under 26 U.S.C. 4083(a)(2). * * *

Section 48.4082–1 also issued under 26 U.S.C. 4082.

Section 48.4082–2 also issued under 26 U.S.C. 4082.

Section 48.4101–1 also issued under 26 U.S.C. 4101(a).

Section 48.4101–2 also issued under 26 U.S.C. 4101(d). * * *

Section 48.6427–8 also issued under 26 U.S.C. 6427(n).

Section 48.6427–9 also issued under 26 U.S.C. 6427(n).

Par. 6. Section 48.0–1 is amended by removing from the fourth sentence the language ''gasoline, diesel and aviation fuel,'' and adding ''taxable fuel, aviation fuel,'' in its place.

§ 48.4041–0T [Removed]

Par. 7. Section 48.4041–0T is removed.

Par. 8. Section 48.4041–0 is added to read as follows:

§ 48.4041–0 Applicability of regulations relating to diesel fuel after December 31, 1993.

Sections 48.4041–3 through 48.4041–17 do not apply to sales or uses of diesel fuel after December 31, 1993. For rules relating to the diesel fuel tax imposed by section 4041 after that date, see § 48.4082–4.

§§ 48.4041–1 and 48.4041–2 [Removed]

Par. 9. Sections 48.4041–1 and 48.4041–2 are removed.

§ 48.4041–2T [Removed]

Par. 10. Section 48.4041–2T is removed.

§ 48.4041–21 [Amended]

§§ 48.4041–15 through 48.4041–21 [Transferred]

Par. 11. Sections 48.4041–15 through 48.4041–21 are transferred from subpart G to subpart F.

§ 48.4041–21 [Amended]

Par. 12. In the first sentence of § 48.4041–21(c)(1), the language ''§ 48.4082–4T(c)(1) through (5)(A) or (c)(6) through (11)'' is removed and ''§ 48.4082–4(c)(1) through (c)(4)(i) or (c)(5) through (c)(10)'' is added in its place.

Par. 13. The heading for subpart G is revised to read as follows:

Subpart G—Fuel Used on Inland Waterways

Par. 14. Section 48.4042–1 is amended as follows:

1. Paragraphs (b) and (e) are revised.

2. In the introductory text of paragraph (f)(1), the language ''(26)'' is removed and ''(27)'' is added in its place.

3. Paragraphs (g)(25) and (g)(26) are redesignated as paragraphs (g)(26) and (g)(27), respectively, and a new paragraph (g)(25) is added.

The revisions and additions read as follows:

§ 48.4042–1 Tax on fuel used in commercial waterway transportation.

* * * * *

(b) *Amount of tax.* For the amount of tax, see section 4042(b).

* * * * *

(e) *Liquid fuel.* For purposes of the tax imposed under this section, liquid fuel means any liquid fuel including gasoline, diesel fuel, special motor fuel, or Bunker C residual fuel oil.

* * * * *

(g) * * *

(25) Tennessee-Tombigbee Waterway: From its confluence with the Tennessee River to the Warrior River at Demopolis, Alabama.

* * * * *

Par. 15. The heading for subpart H is revised to read as follows:

Subpart H—Motor Vehicles, Tires, Tubes, Tread Rubber, and Taxable Fuel

Par. 16. Section 48.4064–1(e)(2) is amended by removing the language ''Form 843'' and adding ''Form 8849 (or on such other form as the Commissioner may designate)'' in its place.

Par. 17. The undesignated center heading preceding § 48.4081–1 is revised to read as follows:

Taxable Fuel

Par. 18. Sections 48.4081–1, 48.4081–2 and 48.4081–3 are revised to read as follows:

§ 48.4081–1 Taxable fuel; definitions.

(a) *Overview.* This section provides definitions for purposes of the tax on taxable fuel imposed by section 4081.

(b) *Definitions.*

Approved terminal or refinery means a terminal or refinery that is operated, respectively, by a taxable fuel registrant that is a terminal operator, or by a taxable fuel registrant that is a refiner.

Blender means any person that produces blended taxable fuel.

Bulk transfer means any transfer of taxable fuel by pipeline or vessel.

Bulk transfer/terminal system means the taxable fuel distribution system consisting of refineries, pipelines, vessels, and terminals. Thus, taxable fuel in a refinery, pipeline, vessel, or terminal is in the bulk transfer/terminal system. Taxable fuel in the fuel supply tank of any engine, or in any tank car, rail car, trailer, truck, or other equipment suitable for ground transportation is not in the bulk transfer/terminal system.

Bus means automobile bus.

Diesel-powered boat means any waterborne vessel of any size or configuration that is propelled, in whole or in part, by a diesel-powered engine.

Diesel-powered bus means any bus that is propelled by a diesel-powered engine.

Diesel-powered highway vehicle means a highway vehicle, as defined in § 48.4041–8(b), that is propelled by a diesel-powered engine.

Diesel-powered train means any diesel-powered equipment or machinery that rides on rails. Thus, for example, the term includes a locomotive, work train, switching engine, and track maintenance machine.

Enterer generally means the importer of record (under customs law) with respect to the taxable fuel. However, if the importer of record is acting as an agent (for example, the importer of record is a customs broker engaged by the owner of the taxable fuel), the person for whom the agent is acting is the enterer. If there is no importer of record for taxable fuel entered into the United States, the owner of the taxable fuel at the time it is brought into the United States is the enterer.

Entry of taxable fuel into the United States occurs when—

(1) The taxable fuel is brought into the United States and applicable customs law requires that the taxable fuel be entered into the United States for consumption, use, or warehousing; or

(2) The taxable fuel is brought into the United States from Puerto Rico and applicable customs law would require that the taxable fuel be entered into the United States for consumption, use, or warehousing if the taxable fuel were brought into the United States from somewhere other than Puerto Rico.

Finished gasoline means all products (including gasohol (as defined in § 48.4081–6(b)(2))) that are commonly or commercially known or sold as gasoline and are suitable for use as a motor fuel, other than products that have an ASTM octane number of less than 75 as determined by the motor method.

Gasoline means finished gasoline and gasoline blendstocks.

Industrial user means any person that receives gasoline blendstocks by bulk transfer for its own use in the manufacture of any product other than finished gasoline.

Position holder means, with respect to taxable fuel in a terminal, the person that holds the inventory position in the taxable fuel, as reflected on the records of the terminal operator. A person holds the inventory position in taxable fuel when that person has a contractual agreement with the terminal operator for the use of storage facilities and terminaling services at a terminal with respect to the taxable fuel. The term also includes a terminal operator that owns taxable fuel in its terminal.

Rack means a mechanism for delivering taxable fuel from a refinery or terminal into a truck, trailer, railroad car, or other means of nonbulk transfer.

Refiner means any person that owns, operates, or otherwise controls a refinery.

Refinery means a facility used to produce taxable fuel from crude oil, unfinished oils, natural gas liquids, or other hydrocarbons and from which taxable fuel may be removed by pipeline, by vessel, or at a rack. However, the term does not include a facility where only blended fuel or gasohol (as defined in § 48.4081–6(b)(2)), and no other type of taxable fuel, is produced. For this purpose blended fuel is any mixture that, if produced outside the bulk transfer/terminal system, would be blended taxable fuel.

Removal means any physical transfer of taxable fuel, and any use of taxable fuel other than as a material in the production of taxable fuel or special fuels (as defined in § 48.4041–8(f)). However, taxable fuel is not removed when it evaporates or is otherwise lost or destroyed.

Sale means—

(1) The transfer of title to, or substantial incidents of ownership in, taxable fuel (other than taxable fuel in a terminal) to the buyer for a consideration, which may consist of money, services, or other property; or

(2) The transfer of the inventory position in the taxable fuel in a terminal if the transferee becomes the position holder with respect to the taxable fuel.

State includes any State, any political subdivision of a State, the District of Columbia, the American Red Cross, and, subject to the limitations of section 7871, any Indian tribal government.

Taxable fuel means gasoline and diesel fuel.

Taxable fuel registrant means an enterer, industrial user, refiner, terminal operator, or throughputter that is registered under section 4101.

Terminal means a taxable fuel storage and distribution facility that is supplied by pipeline or vessel, and from which taxable fuel may be removed at a rack. However, the term does not include any facility at which gasoline blendstocks are used in the manufacture of products other than finished gasoline and from which no gasoline is removed.

Terminal operator means any person that owns, operates, or otherwise controls a terminal.

Throughputter means any person that—

(1) Owns taxable fuel within the bulk transfer/terminal system (other than in a terminal); or

(2) Is a position holder.

Vessel means a waterborne taxable fuel transporting vessel.

(c) *Blended taxable fuel, diesel fuel, and gasoline blendstocks; definitions*—(1) *Blended taxable fuel*—(i) *In general.* Except as provided in paragraphs (c)(1)(ii) and (c)(iii) of this section, *blended taxable fuel* means any mixture that is produced outside the bulk transfer/terminal system and that consists of—

(A) Taxable fuel with respect to which tax has been imposed under section 4041(a)(1) or 4081(a); and

(B) Any other liquid on which tax has not been imposed under section 4081.

(ii) *Exclusion; minor blending.* A mixture described in paragraph (c)(1)(i) of this section is not blended taxable fuel if, during the calendar quarter in which the blender removes or sells the mixture, all such mixtures removed or sold by the blender contain, in the aggregate, less than 400 gallons of liquid described in paragraph (c)(1)(i)(B) of this section.

(iii) *Exclusion; gasohol.* Blended taxable fuel does not include any gasohol (as defined in § 48.4081–6(b)(2)) if, disregarding the alcohol, the gasohol is not blended taxable fuel and contains, in addition to permitted amounts of liquids described in paragraph (c)(1)(i)(B) of this section, only gasoline with respect to which—

(A) Tax was imposed under section 4081(a) at a rate described in § 48.4081–6(e) (relating to the gasohol production tax rate and the gasohol tax rate); or

(B) A valid claim is made under section 6427(f).

(2) *Diesel fuel.* (i) Effective April 1, 1996, *diesel fuel* means any liquid (other than gasoline) that, without further processing or blending, is suitable for use as a fuel in a diesel-powered highway vehicle, diesel-powered train, or diesel-powered boat. However, *diesel fuel* does not include kerosene, No. 5 and No. 6 fuel oils (as described in ASTM Specification D 396, which may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428), or F–76 (Fuel Naval Distillate MIL-F–16884, which may be obtained from Standardization Document Order Desk, Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111).

(ii) Before April 1, 1996, *diesel fuel* means any liquid (other than kerosene) that is commonly or commercially known or sold as a fuel that is suitable for use in a diesel-powered highway vehicle, diesel-powered train, or diesel-powered boat. A liquid meets this requirement if, without further processing or blending, the liquid has practical and commercial fitness for use in the propulsion engine of the highway vehicle, train, or boat. A liquid may possess this practical and commercial fitness even though the specified use is not the liquid's predominant use. However, a liquid does not possess this practical and commercial fitness solely by reason of its possible or rare use as a fuel in the propulsion engine of a highway vehicle, train, or boat.

(iii) *Cross reference.* For the tax on blended taxable fuel, see § 48.4081–3(g). For the back-up tax on certain uses of liquids other than diesel fuel, see § 48.4082–4.

(3) *Gasoline blendstocks*—(i) *In general.* Except as provided in paragraph (c)(3)(ii) of this section, *gasoline blendstocks* means—

(A) Alkylate;
(B) Butane;
(C) Butene;
(D) Catalytically cracked gasoline;
(E) Coker gasoline;
(F) Ethyl tertiary butyl ether (ETBE);
(G) Hexane;
(H) Hydrocrackate;
(I) Isomerate;
(J) Methyl tertiary butyl ether (MTBE);
(K) Mixed xylene (not including any separated isomer of xylene);
(L) Natural gasoline;
(M) Pentane;
(N) Pentane mixture;
(O) Polymer gasoline;
(P) Raffinate;
(Q) Reformate;
(R) Straight-run gasoline;
(S) Straight-run naphtha;
(T) Tertiary amyl methyl ether (TAME);
(U) Tertiary butyl alcohol (gasoline grade) (TBA);
(V) Thermally cracked gasoline;
(W) Toluene; and
(X) Transmix containing gasoline.

(ii) *Exclusion. Gasoline blendstocks* does not include any product that cannot, without further processing, be used in the production of finished gasoline. For example, a mixed hydrocarbon stream that is produced in a natural gas processing plant is not a gasoline blendstock if the stream cannot be used to produce finished gasoline without further processing.

(d) *Effective date.* This section is effective January 1, 1994.

§ 48.4081–2 Taxable fuel; tax on removal at a terminal rack.

(a) *Overview.* This section provides the general rule that all removals of taxable fuel at a terminal rack are subject to tax and the position holder with respect to the fuel is liable for the tax.

(b) *Imposition of tax.* Except as provided in § 48.4081–4 (relating to gasoline blendstocks) and § 48.4082–1 (relating to dyed diesel fuel), tax is imposed on the removal of taxable fuel from a terminal if the taxable fuel is removed at the rack.

(c) *Liability for tax*—(1) *In general.* The position holder with respect to the taxable fuel is liable for the tax imposed under paragraph (b) of this section.

(2) *Joint and several liability of terminal operator; unregistered position holder*—(i) *In general.* The terminal operator is jointly and severally liable for the tax imposed under paragraph (b) of this section if—

(A) The position holder with respect to the taxable fuel is a person other than the terminal operator and is not a taxable fuel registrant; and

(B) The terminal operator has not met the conditions of paragraph (c)(2)(ii) of this section.

(ii) *Conditions for avoidance of liability.* A terminal operator is not liable for tax under this paragraph (c)(2) if, at the time of the removal, the terminal operator—

(A) Is a taxable fuel registrant;

(B) Has an unexpired notification certificate (as described in § 48.4081–5) from the position holder; and

(C) Has no reason to believe that any information in the notification certificate is false.

(3) *Joint and several liability of terminal operator; incorrect information provided.* The terminal operator is jointly and severally liable for the tax imposed under paragraph (b) of this section if, in connection with the removal of diesel fuel that is not dyed and marked in accordance with § 48.4082–1, the terminal operator provides any person (including the position holder with respect to the fuel) with any bill of lading, shipping paper, record, or similar document indicating that the diesel fuel is dyed and marked in accordance with § 48.4082–1.

(4) *Example.* The following example illustrates this paragraph (c) and § 48.4082–1:

Example. (i) TO is a terminal operator and PH is the position holder with respect to, and owner of, 8,000 gallons of diesel fuel stored in TO's terminal. TO and PH are taxable fuel registrants. When the fuel is removed from the terminal at the rack, the fuel is not dyed and marked in accordance with § 48.4082–1, and TO does not provide any person with any paperwork indicating that the fuel is dyed and marked. After the removal from the terminal, PH sells the fuel to individuals for use as heating oil, a nontaxable use.

(ii) Because PH is the position holder of the fuel at the time of the removal from the terminal, PH is liable for the tax imposed by section 4081. The removal is subject to tax because the fuel is not dyed and marked in accordance with § 48.4082–1, and later use of the fuel in a nontaxable use does not make the removal from the terminal exempt from tax.

(iii) Because PH is a taxable fuel registrant and TO did not provide any person with any paperwork indicating that the fuel is dyed and marked, TO is not jointly and severally liable for tax under paragraph (c) (2) or (3) of this section.

(d) *Rate of tax.* For the rate of tax generally, see section 4081(a). For the rate of tax on gasohol and on gasoline removed for gasohol production, see § 48.4081–6.

(e) *Effective date.* This section is effective January 1, 1994.

§ 48.4081–3 Taxable fuel; taxable events other than removal at the terminal rack.

(a) *Overview.* Although tax is imposed when taxable fuel is removed from the terminal at the rack, tax also is imposed in certain other situations described in this section. For the back-up tax on the use of dyed diesel fuel, see § 48.4082–4.

(b) *Tax on removal from a refinery*—(1) *Imposition of tax.* Except as provided in paragraph (b)(2) of this section (relating to an exemption for certain refineries), § 48.4081–4 (relating to gasoline blendstocks), and § 48.4082–1 (relating to dyed diesel fuel), tax is imposed on the following removals from a refinery:

(i) A removal by bulk transfer if the refiner or the owner of the taxable fuel immediately before the removal is not a taxable fuel registrant.

(ii) A removal at the rack.

(iii) After September 30, 1995, a removal of a batch of gasohol from an approved refinery by bulk transfer if the refiner treats itself with respect to the removal as a person that is not registered under section 4101. See § 48.4101–1(a). For the rule providing that no deposit is required in the case of the tax imposed under this paragraph (b)(1)(iii), see § 40.6302(c)–1(e)(4) of this chapter. For the rule allowing inspections of facilities where gasohol is produced, see section 4083.

(2) *Exception for certain refineries.* The tax imposed under paragraph (b)(1)(ii) of this section does not apply to a removal of taxable fuel if—

(i) The taxable fuel is removed from an approved refinery that is not served by pipeline (other than a pipeline for the receipt of crude oil) or vessel;

(ii) The taxable fuel is received at a facility that is operated by a taxable fuel registrant and is located within the bulk transfer/terminal system;

(iii) The removal from the refinery is by—

(A) Rail car; or

(B) In the case of diesel fuel, a trailer or semi-trailer that is used exclusively for the transport service described in paragraphs (b)(2)(i) and (b)(2)(ii) of this section;

(iv) In the case of taxable fuel removed by rail car, the facility at which the fuel is received is operated by the same person that operates the refinery from which the fuel was removed; and

(v) In the case of diesel fuel removed by a trailer or semi-trailer, the facility at which the fuel is received is less than

20 miles from the refinery from which the diesel fuel was removed.

(3) *Liability for tax.* The refiner is liable for the tax imposed under paragraph (b)(1) of this section.

(c) *Tax on entry into the United States*—(1)*Imposition of tax.* Except as provided in § 48.4081–4 (relating to gasoline blendstocks) and § 48.4082–1 (relating to dyed diesel fuel), a tax is imposed on the entry of taxable fuel into the United States if—

(i) The entry is by bulk transfer and the enterer is not a taxable fuel registrant; or

(ii) The entry is not by bulk transfer.

(2) *Liability for tax.* The enterer is liable for the tax imposed under paragraph (c)(1) of this section.

(d) *Tax on bulk transfers from a terminal by an unregistered position holder*—(1) *Imposition of tax.* A tax is imposed on the removal by bulk transfer of taxable fuel from a terminal if the position holder with respect to the taxable fuel is not a taxable fuel registrant.

(2) *Liability for tax*—(i) *In general.* The position holder with respect to the taxable fuel is liable for the tax imposed under paragraph (d)(1) of this section.

(ii) *Joint and several liability of terminal operator.* The terminal operator is jointly and severally liable for the tax imposed under paragraph (d)(1) of this section if—

(A) The position holder with respect to the taxable fuel is a person other than the terminal operator; and

(B) The terminal operator has not met the conditions of paragraph (d)(2)(iii) of this section.

(iii) *Conditions for avoidance of liability.* A terminal operator is not liable for tax under this paragraph (d)(2) if, at the time of the bulk transfer, the terminal operator—

(A) Is a taxable fuel registrant;

(B) Has an unexpired notification certificate (described in § 48.4081–5) from the position holder; and

(C) Has no reason to believe that any information in the notification certificate is false.

(e) *Tax on bulk transfers not received at an approved terminal or refinery*—(1) *Imposition of tax.* Except as provided in § 48.4081–4 (relating to gasoline blendstocks) and § 48.4082–1 (relating to dyed diesel fuel), a tax on taxable fuel is imposed if—

(i) Taxable fuel is removed by bulk transfer from a refinery or terminal, or entered by bulk transfer into the United States;

(ii) No tax was imposed on such removal or entry under paragraph (b), (c), or (d) of this section; and

(iii) Upon removal from the pipeline or vessel, the taxable fuel is not received at an approved terminal or refinery (or at another pipeline or vessel).

(2) *Liability for tax*—(i) *In general.* The owner of the taxable fuel when it is removed from the pipeline or vessel is liable for the tax imposed under paragraph (e)(1) of this section if the owner has not met the conditions of paragraph (e)(2)(ii) of this section.

(ii) *Conditions for avoidance of liability.* An owner of taxable fuel is not liable for tax under paragraph (e)(2)(i) of this section if, at the time the taxable fuel is removed from the pipeline or vessel, the owner of the taxable fuel—

(A) Is a taxable fuel registrant;

(B) Has an unexpired notification certificate (described in § 48.4081–5) from the operator of the terminal or refinery where the taxable fuel is received; and

(C) Has no reason to believe that any information in the notification certificate is false.

(iii) *Liability of the operator of the facility where the taxable fuel is received.* The operator of the facility where the taxable fuel is received is liable for the tax imposed under paragraph (e)(1) of this section if the owner of the taxable fuel has met the conditions of paragraph (e)(2)(ii) of this section and is jointly and severally liable for the tax if the owner has not met such conditions.

(f) *Tax on sales within the bulk transfer/terminal system*—(1) *Imposition of tax.* Except as provided in paragraph (f)(2) of this section and § 48.4082–1 (relating to dyed diesel fuel), a tax is imposed on the sale of taxable fuel located within the bulk transfer/terminal system if the sale is to a person that is not a taxable fuel registrant and tax has not been imposed on such taxable fuel under § 48.4081–2, or paragraph (b), (c), (d), or (e) of this section.

(2) *Exception for certain sales of taxable fuel for export.* The tax imposed under paragraph (f)(1) of this section does not apply to a sale of taxable fuel if—

(i) The buyer's principal place of business is not within the United States;

(ii) The sale of the fuel occurs as the fuel is delivered into a transport vessel;

(iii) The vessel has a capacity of at least 20,000 barrels of fuel;

(iv) The seller is a taxable fuel registrant and the exporter of record of the fuel; and

(v) The fuel was exported in due course.

(3) *Liability for tax*—(i) *In general.* The seller of the taxable fuel is liable for the tax imposed under paragraph (f)(1) of this section if the seller has not met the conditions of paragraph (f)(3)(ii) of this section.

(ii) *Conditions for avoidance of liability.* A seller is not liable for tax under paragraph (f)(3)(i) of this section if, at the time of the sale, the seller—

(A) Is a taxable fuel registrant;

(B) Has an unexpired notification certificate (described in § 48.4081–5) from the buyer; and

(C) Has no reason to believe that any information in the certificate is false.

(iii) *Liability of the buyer.* The buyer of the taxable fuel is liable for the tax imposed under paragraph (f)(1) of this section if the seller of the taxable fuel has met the conditions of paragraph (f)(3)(ii) of this section and is jointly and severally liable for the tax if the seller has not met such conditions.

(4) *Example.* The following example illustrates this paragraph (f) and the definition of the term *sale* in § 48.4081–1:

Example. PH owns one million gallons of untaxed gasoline that is stored in TO's terminal. PH also is the position holder with respect to the gasoline. While the gasoline remains stored in the terminal, PH transfers title to 200,000 gallons of the gasoline to A, a person that is not a taxable fuel registrant. PH continues to hold the inventory position on TO's records with respect to the one million gallons. Because PH continues as the position holder with respect to the gasoline, the transfer of title to the gasoline from PH to A is not a sale of gasoline. Because this transfer of title from PH to A is not a sale of gasoline, the tax imposed under paragraph (f) of this section does not apply to the transfer.

(g) *Tax on removal or sale of blended taxable fuel by the blender*—(1) *Imposition of tax.* A tax is imposed on the removal or sale of blended taxable fuel by the blender thereof. Tax is computed on the difference between the total number of gallons of blended taxable fuel removed or sold and the number of gallons of previously taxed taxable fuel used to produce the blended taxable fuel. For this purpose, the alcohol in gasohol is treated as previously taxed taxable fuel.

(2) *Liability for tax.* The blender is liable for the tax imposed under paragraph (g)(1) of this section.

(3) *Example.* The following example illustrates the provisions of this paragraph (g) and the definition of the term *blended taxable fuel* in § 48.4081–1(c):

Example. (i) X, a gasoline wholesale distributor, buys 9,500 gallons of gasoline at a terminal rack. The gasoline is delivered into a tank trailer. The position holder is liable for tax under § 48.4081–2 when the gasoline is removed at the rack. X then goes to another location where 500 gallons of alcohol (a substance not subject to tax under section 4081) are delivered into the tank

trailer already containing the 9,500 gallons of gasoline. The gasoline and alcohol are splash blended as X drives to X's retail service station where X pumps the blended gasoline into a storage tank for sale to consumers.

(ii) X is a blender within the meaning of § 48.4081–1 because X has produced blended taxable fuel, as defined in § 48.4081–1, by mixing the 9,500 gallons of gasoline on which tax has been imposed under § 48.4081–2(b) with 500 gallons of alcohol, a substance not subject to tax under section 4081. The 10,000 gallon mixture is not gasohol because it does not satisfy the alcohol-content requirement described in § 48.4081–6(b)(2). X, the blender, is liable for the tax imposed under this paragraph (g) on the blended gasoline. The tax is imposed when the blended gasoline is removed from the tank trailer at the retail station. Tax on the blended mixture is computed on 500 gallons, the number of gallons not previously subject to tax under section 4081.

(h) *Rate of tax.* For the rate of tax generally imposed under this section, see section 4081(a). For the rate of tax on gasohol and on gasoline removed or entered for gasohol production, see § 48.4081–6.

(i) *Effective date.* This section is effective January 1, 1994.

Par. 19. Section 48.4081–4 is amended as follows:

1. The heading for § 48.4081–4 is revised.

2. In paragraph (a), the language ''to produce gasoline'' is removed and ''to produce finished gasoline'' is added in its place.

3. In paragraph (b)(1)(i), the language ''gasoline registrant'' is removed and ''taxable fuel registrant'' is added in its place.

4. In paragraph (b)(1)(ii), the language ''gasoline (as defined in § 48.4081–1(i)(1))'' is removed and ''finished gasoline'' is added in its place.

5. In paragraphs (b)(2)(i) and (c)(1), the language ''gasoline registrant'' is removed each place it appears and ''taxable fuel registrant'' is added in its place.

6. The language ''and'' is added following the semicolon at the end of paragraph (c)(2).

7. Paragraph (c)(3) is revised.

8. Paragraph (c)(4) is removed.

9. In paragraph (d), the language ''gasoline registrant'' is removed and ''taxable fuel registrant'' is added in its place.

10. In paragraphs (e)(2) and (e)(3), the language ''production of gasoline'' is removed each place it appears and ''production of finished gasoline'' is added in its place.

11. In paragraph (e)(3), the language ''to produce gasoline'' is removed each place it appears, and ''to produce finished gasoline'' is added in its place.

12. In paragraph (f), the language ''1993'' is removed and ''1994'' is added in its place.

The revisions read as follows:

§ 48.4081–4 Gasoline; special rules for gasoline blendstocks.

* * * * *

(c) * * *

(3) Has no reason to believe that any information in the certificate is false.

* * * * *

Par. 20. Section 48.4081–5 is amended as follows:

1. The heading for § 48.4081–5 is revised to read as follows:

§ 48.4081–5 Taxable fuel; notification certificate of taxable fuel registrant.

2. In paragraph (a), the first sentence in paragraph (b)(1) introductory text, and paragraph (b)(2), the language ''gasoline'' is removed each place it appears and ''taxable fuel'' is added in its place.

3. In paragraph (b)(3), the language ''or letter of registration'' is added after ''Form 637'' in the heading and after ''(Form 637)'' in the text.

4. In paragraph (c), the language ''1993'' is removed and ''1994'' is added in its place.

Par. 21. The heading for § 48.4081–6 is revised to read as follows:

§ 48.4081–6 Gasoline; gasohol.

§ 40.4081–7 [Amended]

Par. 22. Section 48.4081–7 is amended as follows:

1. In paragraph (c)(2), two new listings are added at the end of the listings in line 5 of the taxpayer's report:

''_____ Removal at the terminal rack
_____ Removal or sale by the blender''

2. In paragraph (c)(4)(i)(A) and the first sentence of paragraph (c)(4)(iii), the language ''§ 48.4081–1(r))'' is removed and ''§ 48.4081–1))'' is added in its place.

Par. 23. Section 48.4081–8 is revised to read as follows:

§ 48.4081–8 Taxable fuel; measurement.

(a) *In general.* For purposes of the tax imposed by section 4081, gallons of taxable fuel may be measured on the basis of—

(1) Actual volumetric gallons;

(2) Gallons adjusted to 60 degrees Fahrenheit; or

(3) Any other temperature adjustment method approved by the Commissioner.

(b) *Effective date.* This section is effective January 1, 1994.

§§ 48.4081–10T, 48.4081–11T, and 48.4081–12T [Removed]

Par. 24. Sections 48.4081–10T through 48.4081–12T are removed.

Par. 25. Section 48.4082–1 is revised to read as follows:

§ 48.4082–1 Diesel fuel tax; exemption.

(a) *Exemption.* Tax is not imposed by section 4081 on the removal, entry, or sale of any diesel fuel if—

(1) The person otherwise liable for tax is a taxable fuel registrant;

(2) In the case of a removal from a terminal, the terminal is an approved terminal; and

(3) The diesel fuel satisfies the dyeing and marking requirements of paragraphs (b), (c), and (d) of this section.

(b) *Dyeing requirements.* Diesel fuel satisfies the dyeing requirement of this paragraph (b) only if it contains—

(1) The dye Solvent Red 164 (and no other dye) at a concentration spectrally equivalent to at least 3.9 pounds of the solid dye standard Solvent Red 26 per thousand barrels of diesel fuel; or

(2) Any dye of a type and in a concentration that has been approved by the Commissioner.

(c) *Marking requirements.* [Reserved]

(d) *Time for adding the dye and marker.* [Reserved]

(e) *Effective date.* This section is effective March 14, 1996.

§§ 48.4082–2T, 48.4082–3T, 48.4082–4T and 48.4083 [Removed]

Par. 26. Sections 48.4082–2T, 48.4082–3T, 48.4082–4T, and 48.4083 are removed.

Par. 27. Sections 48.4082–2, 48.4082–3, 48.4082–4, and 48.4083–1 are added to read as follows:

§ 48.4082–2 Diesel fuel tax; notice required with respect to dyed diesel fuel.

(a) *In general.* A legible and conspicuous notice stating: *DYED DIESEL FUEL, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE* must be posted by a seller on any retail pump or other delivery facility where it sells dyed diesel fuel for use by its buyer. Any seller that fails to post the required notice on any retail pump or other delivery facility where it sells dyed diesel fuel is, for purposes of the penalty imposed by section 6714, presumed to know that the fuel will not be used for a nontaxable use.

(b) *Cross reference; terminal operators.* For the requirement that terminal operators provide a notice with respect to dyed diesel fuel, see § 48.4101–1(h)(3) (relating to terms and conditions of registration for terminal operators).

(c) *Effective date.* This section is effective January 1, 1994.

§ 48.4082–3 Diesel fuel; visual inspection devices. [Reserved]

§ 48.4082–4 Diesel fuel; back-up tax.

(a) *Imposition of tax*—(1) *In general.* Tax is imposed by section 4041 on the delivery into the fuel supply tank of the propulsion engine of a diesel-powered highway vehicle (other than a diesel-powered bus) or diesel-powered boat of—

(i) Any diesel fuel on which tax has not been imposed by section 4081;

(ii) Any diesel fuel on which a credit or payment has been allowed under section 6427; or

(iii) Any liquid other than gasoline or diesel fuel.

(2) *Liability for tax*—(i) *In general.* The operator of the highway vehicle or boat into which the fuel is delivered is liable for the tax imposed under paragraph (a)(1) of this section.

(ii) *Joint and several liability of the seller.* The seller of the fuel is jointly and severally liable for the tax imposed under paragraph (a)(1) of this section if the seller knows or has reason to know that the fuel will not be used in a nontaxable use.

(3) *Rate of tax.* The rate of tax is the rate imposed on diesel fuel by section 4081(a).

(b) *Tax on diesel fuel; buses and trains*—(1) *In general.*Tax is imposed by section 4041 on the delivery into the fuel supply tank of the propulsion engine of a diesel-powered bus or a diesel-powered train of—

(i) Any diesel fuel on which tax has not been imposed by section 4081;

(ii) Any diesel fuel on which a credit or payment has been allowed under section 6427; or

(iii) Any liquid other than gasoline or diesel fuel.

(2) *Liability for tax*—(i) *In general.* Except as provided in paragraph (b)(2)(ii) of this section, the operator of the bus or train into which the fuel is delivered is liable for the tax imposed under paragraph (b)(1) of this section.

(ii) *Special rule for certain train operators.* The person that delivers the fuel into the fuel supply tank of a train, rather than the train operator, is liable for the tax imposed under paragraph (b)(1) of this section if, at the time of the delivery—

(A) The deliverer of the fuel and the operator of the train are both registered as train operators under § 48.4101–1; and

(B) A written agreement between the deliverer of the fuel and the operator requires the deliverer to pay the tax imposed under paragraph (b)(1) of this section.

(3) *Rate of tax*—(i) *Buses*—(A) *In general.* The rate of tax under paragraph (b)(1) of this section is the sum of the rates described in sections 4041(a)(1)(C)(iii)(I) and 4041(d)(1) (the bus rate) if the bus is used to furnish (for compensation) passenger land transportation available to the general public and either such transportation is scheduled and along regular routes or the seating capacity of the bus is at least 20 adults (not including the driver). A bus is available to the general public if the bus is available for hire to more than a limited number of persons, groups, or organizations.

(B) *Other uses.* The rate of tax under paragraph (b)(1) of this section is the rate of tax imposed on diesel fuel by section 4081(a) if the bus is used for a purpose other than that described in paragraph (b)(3)(i)(A) of this section.

(ii) *Trains.* The rate of tax under paragraph (b)(1) of this section is the rate prescribed in section 4041 for diesel fuel sold for use in a train (the train rate).

(4) *Cross reference.* For the registration requirement relating to certain bus and train operators, see § 48.4101–1(c)(2).

(c) *Exemptions.* The taxes imposed under paragraphs (a) and (b) of this section do not apply to a delivery of any liquid for—

(1) Use on a farm for farming purposes as that term and related terms are defined in § 48.6420–4 (a) through (g);

(2) The exclusive use of a State;

(3) Use described in section 4041(h) (relating to use in a vehicle owned by an aircraft museum);

(4) Use in a boat employed in—

(i) The business of commercial fishing;

(ii) The business of transporting persons or property for compensation or hire; or

(iii) Any other trade or business, unless the boat is used in any activity of a type generally considered to constitute entertainment, amusement, or recreation (within the meaning of section 274(a)(1)(A) and the regulations under that section);

(5) Use in a bus while the bus is engaged in the transportation of students and employees of schools (as defined in the last sentence of section 4221(d)(7)(C));

(6) Use in a qualified local bus (as defined in section 6427(b)(2)(D)) while the bus is engaged in furnishing (for compensation) intracity passenger land transportation that is available to the general public and is scheduled and along regular routes;

(7) Use in a highway vehicle that—

(i) Is not registered (and is not required to be registered) for highway use under the laws of any State or foreign country; and

(ii) Is used in the operator's trade or business or in an activity of the operator described in section 212 (relating to the production of income);

(8) The exclusive use of a nonprofit educational organization, as defined in § 48.4221–6(b);

(9) Use in a highway vehicle that is owned by the United States and is not used on the highway; or

(10) Use in any boat operated by the United States for the exclusive use of the United States or any vessel of war of any foreign nation, as described in § 48.4221–4(b)(5).

(d) *Effective date.* This section is effective January 1, 1994.

§ 48.4083–1 Taxable fuel; administrative authority.

(a) *In general*—(1) *Authority to inspect.* Officers or employees of the IRS designated by the Commissioner, upon presenting appropriate credentials and a written notice to the owner, operator, or agent in charge, are authorized to enter any place and to conduct inspections in accordance with paragraphs (a) through (c) of this section.

(2) *Reasonableness.* Inspections will be performed in a reasonable manner and at times that are reasonable under the circumstances, taking into consideration the normal business hours of the place to be entered.

(b) *Place of inspection*—(1) *In general.* Inspections may be at any place at which taxable fuel is (or may be) produced or stored or at any inspection site where evidence of activities described in section 6714(a) may be discovered. These places may include, but are not limited to—

(i) Any terminal;

(ii) Any fuel storage facility that is not a terminal;

(iii) Any retail fuel facility; or

(iv) Any designated inspection site.

(2) *Designated inspection sites.* A designated inspection site is any State highway inspection station, weigh station, agricultural inspection station, mobile station, or other location designated by the Commissioner to be used as a fuel inspection site. A designated inspection site will be identified as a fuel inspection site.

(c) *Scope of inspection*—(1) *Inspection.* Officers or employees may physically inspect, examine or otherwise search any tank, reservoir, or other container that can or may be used for the production, storage, or transportation of fuel, fuel dyes, or fuel markers. Inspection may also be made of any equipment used for, or in connection with, production, storage, or

transportation of fuel, fuel dyes, or fuel markers. This includes any equipment used for the dyeing or marking of fuel. This also includes books and records, if any, that are maintained at the place of inspection and are kept to determine excise tax liability under section 4081.

(2) *Detainment.* Officers or employees may detain any vehicle, train, or boat for the purpose of inspecting its fuel tanks and storage tanks. Detainment will be either on the premises under inspection or at a designated inspection site. Detainment may continue for such reasonable period of time as is necessary to determine the amount and composition of the fuel.

(3) *Removal of samples.* Officers or employees may take and remove samples of fuel in such quantities as are reasonably necessary to determine the composition of the fuel.

(d) *Refusal to submit to inspection*—(1) *Imposition of penalty.* Any person that refuses to allow an inspection will be fined $1,000 for each refusal. This penalty is in addition to any other penalty or tax that may be imposed upon that person or any other person liable for tax under section 4081 or penalty under section 6714.

(2) *Assessment of penalty.* This penalty is an assessable penalty and is assessed in accordance with section 6671.

(e) *Effective date.* This section is effective January 1, 1994.

Par. 28. The undesignated center heading preceding § 48.4101–1 is removed.

Par. 29. Section 48.4101–1 is revised to read as follows:

§ 48.4101–1 Registration.

(a) *In general.* (1) This section provides rules relating to registration under section 4101 for purposes of the federal excise tax on taxable fuel imposed by sections 4041(a)(1) and 4081 and the credit or payment allowed to registered ultimate vendors of diesel fuel under section 6427.

(2) A person is registered under section 4101 only if the district director has issued a registration letter to the person and the registration has not been revoked or suspended.

(3) A refiner that is registered under section 4101 may, with respect to the bulk removal of any batch of gasohol from its refinery, treat itself as a person that is not registered. See § 48.4081–3(b)(1)(iii).

(4) Each business unit that has, or is required to have, a separate employer identification number is treated as a separate person. Thus, two business units (for example, a parent corporation and a subsidiary corporation, or a proprietorship and a related partnership), each of which has a different employer identification number, are two persons.

(5) A registration in effect on December 31, 1993, with respect to the tax on gasoline or diesel fuel is subject to the district director's review, and to revocation or suspension, under the standards set forth in this section, but remains in effect until the earlier of—

(i) The effective date of a registration issued under paragraph (g)(3) of this section; or

(ii) The effective date of the revocation or suspension of the registration under paragraph (i) of this section.

(b) *Definitions*—(1) *Applicant.* An *applicant* is a person that has applied for registration under paragraph (e) of this section.

(2) *Bonded registrant.* A *bonded registrant* is a person that has given a bond to the district director under paragraph (j) of this section as a condition of registration.

(3) *Gasohol bonding amount.* The *gasohol bonding amount* is the product of—

(i) The rate of tax applicable to later separation, as described in § 48.4081–6(f)(1)(iii); and

(ii) The total number of gallons of gasoline expected to be bought at the gasohol production tax rate by the gasohol blender during a representative 6-month period (as determined by the district director).

(4) *Penalized for a wrongful act.* A person has been *penalized for a wrongful act* if the person has—

(i) Been assessed any penalty under chapter 68 of the Internal Revenue Code (or similar provision of the law of any State) for fraudulently failing to file any return or pay any tax, and the penalty has not been wholly abated, refunded, or credited;

(ii) Been assessed any penalty under chapter 68 of the Internal Revenue Code, such penalty has not been wholly abated, refunded, or credited, and the district director determines that the conduct resulting in the penalty is part of a consistent pattern of failing to deposit, pay, or pay over a substantial amount of tax;

(iii) Been convicted of a crime under chapter 75 of the Internal Revenue Code (or similar provision of the law of any State), or of conspiracy to commit such a crime, and the conviction has not been wholly reversed by a court of competent jurisdiction;

(iv) Been convicted, under the laws of the United States or any State, of a felony for which an element of the offense is theft, fraud, or the making of false statements, and the conviction has not been wholly reversed by a court of competent jurisdiction;

(v) Been assessed any tax under section 4103 and the tax has not been wholly abated, refunded, or credited; or

(vi) Had its registration under section 4101 or 4222 revoked.

(5) *Related person.* A *related person* is a person that—

(i) Directly or indirectly exercises control over an activity of the applicant if the activity is described in paragraph (c)(1) or (d) of this section;

(ii) Owns, directly or indirectly, five percent or more of the applicant;

(iii) Is under a duty to assure the payment of a tax for which the applicant is responsible;

(iv) Is a member, with the applicant, of a group of organizations (as defined in § 1.52–1(b) of this chapter) that would be treated as a group of trades or businesses under common control for purposes of § 1.52–1 of this chapter; or

(v) Distributed or transferred assets to the applicant in a transaction in which the applicant's basis in the assets is determined by reference to the basis of the assets in the hands of the distributor or transferor.

(6) *Registrant.* A *registrant* is a person that the district director has, in accordance with paragraph (g)(3) of this section, registered under section 4101 and whose registration has not been revoked or suspended.

(c) *Persons required to be registered*—(1) *In general.* A person is required to be registered under section 4101 if the person is a—

(i) Blender;
(ii) Enterer;
(iii) Refiner;
(iv) Terminal operator; or
(v) Position holder.

(2) *Bus and train operators.* Every operator of a bus or train is required to be registered under section 4101 at any time it incurs any liability for tax under section 4041 at the bus rate (as described in § 48.4082–4(b)(3)(i)) or the train rate (as described in § 48.4082–4(b)(3)(ii)).

(3) *Consequences of failing to register.* For the criminal penalty imposed for failure to register, see section 7232. For the civil penalty imposed for failure to register, see section 7272.

(d) *Persons that may, but are not required to, be registered.* A person may, but is not required to, be registered under section 4101 if the person is a—

(1) Gasohol blender;
(2) Industrial user;
(3) Throughputter that is not a position holder; or
(4) Ultimate vendor of diesel fuel.

(e) *Application instructions.* Application for registration under section 4101 must be made in accordance with the instructions for Form 637 (or such other form as the Commissioner may designate).

(f) *Registration tests*—(1) *In general*—(i) *Persons other than ultimate vendors.* Except as provided in paragraph (f)(1)(ii) of this section, the district director will register an applicant only if the district director determines that the applicant meets the following three tests (collectively, the registration tests):

(A) The activity test of paragraph (f)(2) of this section.

(B) The acceptable risk test of paragraph (f)(3) of this section.

(C) The adequate security test of paragraph (f)(4) of this section.

(ii) *Ultimate vendors.* The district director will register an applicant as an ultimate vendor of diesel fuel only if the district director—

(A) Determines that the applicant meets the activity test of paragraph (f)(2) of this section; and

(B) Is satisfied with the filing, deposit, payment, and claim history for all federal taxes of the applicant and any related person.

(2) *The activity test.* An applicant meets the activity test of this paragraph (f)(2) only if the district director determines that the applicant—

(i) Is, in the course of its trade or business, regularly engaged as an operator of a bus or train or in the characteristic activity of a person described in paragraph (c)(1) or (d) of this section; or

(ii) Is likely to be (because of such factors as the applicant's business experience, financial standing, or trade connections), in the course of its trade or business, regularly engaged as an operator of a bus or train or in the characteristic activity of a person described in paragraph (c)(1) or (d) of this section within a reasonable time after becoming registered under section 4101.

(3) *Acceptable risk test*—(i) *In general.* An applicant meets the acceptable risk test of this paragraph (f)(3) only if—

(A) Neither the applicant nor a related person has been penalized for a wrongful act; or

(B) Even though the applicant or a related person has been penalized for a wrongful act, the district director determines, after review of evidence offered by the applicant, that the registration of the applicant does not create a significant risk of nonpayment or late payment of the tax imposed by sections 4041(a)(1) and 4081.

(ii) *Significant risk of nonpayment or late payment of tax.* In making the determination described in paragraph (f)(3)(i)(B) of this section, the district director may consider factors such as the following:

(A) The time elapsed since the applicant or related person was penalized for a wrongful act.

(B) The present relationship between the applicant and any related person that was penalized for any wrongful act.

(C) The degree of rehabilitation of the person penalized for any wrongful act.

(D) The amount of bond given by the applicant. In this regard, the district director may accept a bond under paragraph

(j) of this section, without regard to the limits on the amount of the bond set by paragraph (j)(2) of this section.

(4) *Adequate security test*—(i) *In general.* An applicant meets the adequate security test of this paragraph (f)(4) only if the district director determines that the applicant has both adequate financial resources and a satisfactory tax history, or the applicant gives the district director a bond (under the provisions of paragraph (j) of this section).

(ii) *Adequate financial resources*—(A) *In general.* An applicant has adequate financial resources only if the district director determines that the applicant is financially capable of paying—

(*1*) Its expected tax liability under sections 4041(a)(1) and 4081 for a representative 6-month period (as determined by the district director);

(*2*) In the case of a terminal operator, the expected tax liability under section 4081 of persons other than the terminal operator with respect to taxable fuel removed at the racks of its terminals during a representative 1-month period (as determined by the district director); and

(*3*) In the case of a gasohol blender, the gasohol bonding amount.

(B) *Basis for determination.* The determination under this paragraph (f)(4)(ii) must be based on financial information such as the applicant's income statement, balance sheet or bond ratings, or other information related to the applicant's financial status.

(iii) *Satisfactory tax history.* An applicant has a satisfactory tax history only if the district director is satisfied with the filing, deposit, and payment history for all federal taxes of the applicant and any related person.

(g) *Action on the application by the district director*—(1) *Review of application.* The district director may investigate the accuracy and completeness of any representations made by an applicant, request any additional relevant information from the applicant, and inspect the applicant's premises during normal business hours without advance notice.

(2) *Denial.* If the district director determines that an applicant does not meet all of the applicable registration tests described in paragraph (f) of this section, the district director must notify the applicant, in writing, that its application for registration is denied and state the basis for the denial.

(3) *Approval.* If the district director determines that an applicant meets all of the applicable registration tests described in paragraph (f) of this section, the district director must register the applicant under section 4101 and issue the applicant a letter of registration containing the effective date of the registration. The effective date of the registration must be no earlier than the date on which the district director signs the letter of registration. A copy of an application for registration (Form 637) is not a letter of registration.

(h) *Terms and conditions of registration*—(1) *Affirmative duties.* Each registrant must—

(i) Make deposits, file returns, and pay taxes required by the Internal Revenue Code and the regulations;

(ii) Keep records sufficient to show the registrant's tax liability under sections 4041(a)(1) and 4081 and payments or deposits of such liability;

(iii) Make all information reports required under section 4101(d) and § 48.4101–2;

(iv) Make available for inspection on demand by the Internal Revenue Service during normal business hours records relevant to a determination of tax liability under sections 4041(a)(1) and 4081; and

(v) Notify the district director of any change (such as a change in ownership) in the information the registrant submitted in connection with its application for registration, or previously submitted under this paragraph (h)(1)(v), within 10 days after the change occurs.

(2) *Prohibited actions.* A registrant may not—

(i) Sell, lease or otherwise allow another person to use its registration;

(ii) Make any false statement to the district director in connection with a submission under paragraph (h)(1) or (h)(3) of this section;

(iii) Make any false statement on, or violate the terms of—

(A) A notification certificate of a taxable fuel registrant (as described in § 48.4081–5(b)); or

(B) A certificate of a registered gasohol blender (as described in § 48.4081–6(c)(2)).

(3) *Additional terms and conditions for terminal operators*—(i) *Notice*

required with respect to dyed diesel fuel. A legible and conspicuous notice stating: *DYED DIESEL FUEL, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE* must be provided by each terminal operator to any person that receives dyed diesel fuel at a terminal rack of that operator. This notice must be provided by the time of the removal and must appear on all shipping papers, bills of lading, and similar documents that are provided by the terminal operator to accompany the removal of the fuel.

(ii) *Records to be maintained relating to removals of diesel fuel.* Each terminal operator must keep the following information with respect to each rack removal of diesel fuel at each terminal it operates:

(A) The bill of lading or other shipping document.

(B) The record of whether the fuel was dyed and marked in accordance with § 48.4082–1.

(C) The volume and date of the removal.

(D) The identity of the person, such as a common carrier, that physically received the fuel.

(E) Any other information required by the Commissioner.

(iii) *Records to be maintained relating to dye.* With respect to each of its terminals, a terminal operator must keep records relating to dye inventories and usage.

(iv) *Retention of information.* In addition to any other requirement relating to the retention of records, the terminal operator must—

(A) Maintain the information described in paragraph (h)(3)(ii) of this section at the terminal from which the removal occurred for at least 3 months after the removal to which it relates; and

(B) Maintain the information described in paragraph (h)(3)(iii) of this section at the terminal where the dye was received for at least 3 months after the receipt.

(v) *Prohibition on providing incorrect information.* In connection with the removal of diesel fuel that is not dyed and marked in accordance with § 48.4082–1, a terminal operator may not provide any person (including the position holder with respect to the fuel) with any bill of lading, shipping paper, or similar document indicating that the diesel fuel is dyed and marked in accordance with § 48.4082–1.

(i) *Adverse actions by the district director against a registrant*—(1) *Mandatory revocation or suspension.* The district director must revoke or suspend the registration of any registrant if the district director determines that the registrant, at any time—

(i) Does not meet one or more of the applicable registration tests under paragraph (f) of this section and has not corrected the deficiency within a reasonable period of time after notification by the district director;

(ii) Has used its registration to evade, or attempt to evade, the payment of any tax imposed by section 4041(a)(1) or 4081, or to postpone or in any manner to interfere with the collection of any such tax, or to make a fraudulent claim for a credit or payment;

(iii) Has aided or abetted another person in evading, or attempting to evade, payment of any tax imposed by section 4041(a)(1) or 4081, or in making a fraudulent claim for a credit or payment; or

(iv) Has sold, leased, or otherwise allowed another person to use its registration.

(2) *Remedial action permitted in other cases.* If the district director determines that a registrant has, at any time, failed to comply with the terms and conditions of registration under paragraph (h) of this section, made a false statement to the district director in connection with its application for registration or retention of registration, or otherwise used its registration in a manner that creates a significant risk of nonpayment or late payment of tax, then the district director may—

(i) Revoke or suspend the registrant's registration;

(ii) In the case of a registrant other than an ultimate vendor, require the registrant to give a bond under the provisions of paragraph (j) of this section as a condition of retaining its registration; and

(iii) In the case of a registrant other than an ultimate vendor, require the registrant to file monthly or semimonthly returns under § 40.6011(a)–1(b) of this chapter as a condition of retaining its registration.

(3) *Action by the district director to revoke or suspend a registration.* If the district director revokes or suspends a registration, the district director must so notify the registrant in writing and state the basis for the revocation or suspension. The effective date of the revocation or suspension may not be earlier than the date on which the district director notifies the registrant.

(j) *Bonds*—(1) *Form.* Each bond given to the district director as a condition of registration under paragraph (f)(4)(i) or (i)(2)(ii) of this section must be executed in the form prescribed by the district director. Each bond must be—

(i) A public debt obligation of the United States Government;

(ii) An obligation the principal and interest of which are unconditionally guaranteed by the United States Government;

(iii) A bond executed by a surety company listed in Department of the Treasury Circular 570 as an acceptable surety or reinsurer of federal bonds (a surety bond); or

(iv) Any other bond with security (including liens under section 4101(b)(1)(B)) considered acceptable by the district director.

(2) *Amount of bond.* A bond given under this paragraph (j) must be in an amount that the district director determines will ensure timely collection of the taxes imposed by sections 4041(a)(1) and 4081, taking into account the applicant's financial capabilities, tax history, and expected liability under sections 4041(a)(1) and 4081. The district director may increase or decrease the amount of the required bond to take into account changes in the applicant's financial capabilities, tax history, and expected liability under sections 4041(a)(1) and 4081. However, in no case may the amount of the bond be greater than the amount that the district director determines is equal to—

(i) The applicant's expected tax liability under sections 4041(a)(1) and 4081 for a representative 6-month period (as determined by the district director);

(ii) In the case of a terminal operator, the expected tax liability of persons other than the terminal operator under section 4081 with respect to taxable fuel removed at the racks of its terminals (determined as if all removals of taxable fuel were taxable) during a representative 1-month period (as determined by the district director); and

(iii) In the case of a gasohol blender, the gasohol bonding amount.

(3) *Collection of taxes from a bond.* If a bonded registrant does not pay the amount of tax it incurs under section 4041(a)(1) or 4081 by the time prescribed in section 6151 for paying that tax, the district director may collect the amount of the unpaid tax (including penalties and interest with respect to that tax) from the bonded registrant's bond.

(4) *Termination of bonds*—(i) *Surety bonds.* A surety on a bond may give written notice to the district director and the bonded registrant that the surety desires to be relieved of liability under the bond after a certain date, which date must be at least 60 days after the receipt of the notice by the district director. The surety will be relieved of any liability that the bonded registrant incurs after the date named in the notice. However, the surety remains liable for the amount

of tax that the bonded registrant incurred under sections 4041(a)(1) and 4081 during the term of the bond and for penalties and interest with respect to that tax.

(ii) *Other bonds.* A bond (other than a surety bond) given to the district director may be returned to the bonded registrant only after the earlier of—

(A) The district director's determination that the bonded registrant has paid all taxes that the bonded registrant incurred under sections 4041(a)(1) and 4081 during the period covered by the bond and any penalties and interest with respect to the taxes;

(B) The expiration of the period for assessment of the taxes that the bonded registrant incurred under sections 4041(a)(1) and 4081 taxes during the period covered by the bond, as determined under the provisions of subchapter A of chapter 66 of the Internal Revenue Code; or

(C) The date that the district director receives from the registrant a substitute bond given under this paragraph (j).

(5) *Determination that bond is no longer required.* If the district director determines that the bonded registrant meets the adequate security test of paragraph (f)(4) of this section without a bond, the registrant is to be released from the obligation to give a bond as a condition of registration under section 4101.

(k) *Cross references.* For a rule relating to the filing of monthly and semimonthly returns by certain persons that are registered under section 4101, see § 40.6011(a)–1(b)(2) of this chapter. For rules relating to the tax on taxable fuel, see §§ 48.4081–1 through 48.4083–1. For rules relating to claims by registered ultimate vendors, see § 48.6427–9.

(l) *Effective dates.* (1) Except as otherwise provided in this paragraph (l), this section is applicable as of January 1, 1994.

(2) Paragraph (c)(1) of this section (relating to persons required to be registered) is applicable as of January 1, 1995.

(3) Paragraph (h)(3)(iii) of this section (relating to certain recordkeeping requirements) is applicable as of July 1, 1996.

Par. 30. Section 48.4101–2 is added to read as follows:

§ 48.4101–2 Information reporting.

(a) *In general*—(1) *Taxable fuel registrants.* Each taxable fuel registrant must make a return showing—

(i) The name and registration number (if any) of each person that is a position holder at each terminal it operates;

(ii) The amount of taxable fuel received at each terminal it operates;

(iii) The identity of each position holder with respect to—

(A) All rack removals of taxable fuel from each terminal it operates, and the volume and dates of the removals; and

(B) In the case of rack removals of diesel fuel, whether the fuel was dyed and marked at the operator's terminal in accordance with § 48.4082–1;

(iv) The amount of taxable fuel stored at each terminal it operates;

(v) The destination (by state) of all taxable fuel removed at a terminal rack of each terminal it operates, to the extent such information has been provided to the registrant;

(vi) The name and registration number (if any) of the operator of each terminal at which it is a position holder;

(vii) The volume and date of the removal with respect to all rack removals of taxable fuel for which it is the position holder;

(viii) In the case of nonbulk removals and entries of gasoline blendstocks for which it would be liable for tax but for the special rule in § 48.4081–4(c), the name and registration number of each operator of each refinery and terminal where the gasoline blendstocks are received;

(ix) The name and registration number (if any) of each person to which it sells (within the meaning of § 48.4081–1) taxable fuel located in the bulk transfer/terminal system;

(x) The name and registration number of each person from which it receives a certificate described in § 48.4081–6(c) (relating to certificate of registered gasohol blender);

(xi) With respect to any liability incurred under § 48.4081–3(e) (relating to tax on bulk transfers not received at an approved terminal or refinery)—

(A) The date on which the removal of the taxable fuel from a pipeline or vessel gave rise to the liability; and

(B) The location of the taxable fuel at the time of the removal; and

(xii) Any other information required by the Commissioner.

(2) *Gasohol blenders.* Each registered gasohol blender must make a return showing, with respect to each batch of gasohol it produced from gasoline it bought at the gasohol production tax rate—

(i) The name and registration number of the person that sold it the gasoline;

(ii) The date and location of the purchase of the gasoline;

(iii) The volume of the gasoline;

(iv) The name, address, and employer identification number of the person that sold it the alcohol;

(v) The date and location of the purchase of the alcohol;

(vi) The volume and type of the alcohol; and

(vii) Any other information required by the Commissioner.

(3) *Pipeline and vessel operators.* Each operator of a pipeline or vessel that makes a bulk transfer of taxable fuel to a terminal or refinery must make a return showing—

(i) The location of the terminal or refinery where the taxable fuel was delivered;

(ii) The date of the delivery; and

(iii) Any other information required by the Commissioner.

(b) *Form and time of return.* Each return required under this section must be made at the time and in the form required by the Commissioner.

(c) *Consequences for failure to make a return.* For the consequences for failing to make an information return required by this section, see § 48.4101–1(i) (relating to adverse actions against a registrant) and section 6721 (relating to a penalty for failure to file an information return).

(d) *Effective date.* This section is applicable as of April 1, 1996.

§§ 48.4101–2T, 48.4101–3, 48.4101–3T, and 48.4101–4T [Removed]

Par. 31. Sections 48.4101–2T, 48.4101–3, 48.4101–3T, and 48.4101–4T are removed.

Par. 32. Section 48.4102–1 is amended as follows:

1. Paragraph (a) is revised.

2. Paragraph (b)(1) is amended by removing the language ''on the sale or use of gasoline or lubricating oil, respectively,''.

3. Paragraph (b)(2) is amended by removing ''gasoline or lubricating oil'' each place it appears and adding ''taxable fuel or aviation fuel'' in its place.

The revision reads as follows:

§ 48.4102–1 Inspection of records by State or local tax officers.

(a) *Inspection of records maintained by taxpayer.* The records that a taxpayer is required to keep with respect to the taxes imposed by section 4081 or 4091 must be open to inspection by any officer of any State or political subdivision thereof, or of the District of Columbia, who is charged with the enforcement or collection of any tax on taxable fuel or aviation fuel.

* * * * *

§ 48.4221 [Removed]

Par. 33. Section 48.4221 is removed.

Par. 34. Section 48.4221–1 is amended as follows:

1. Paragraph (a) is revised.

2. Paragraph (b)(2)(iv) is amended by adding ''and'' at the end.

3. Paragraph (b)(2)(v) is revised.

4. Paragraphs (b)(2)(vi) through (b)(2)(xii) are removed.

5. Paragraph (b)(3) is removed and paragraphs (b)(4) and (b)(5) are redesignated as paragraphs (b)(3) and (b)(4), respectively.

The revised provisions read as follows:

§ 48.4221–1 Tax-free sales; general rule.

(a) *Application of regulations under section 4221*—(1) *In general.* The regulations under section 4221 provide rules under which the manufacturer, producer, or importer of an article subject to tax under chapter 32 (or the retailer of an article subject to tax under subchapter A or C of chapter 31) may sell the article tax free under section 4221.

(2) *Limitations.* The following restrictions must be taken into account in applying the regulations under section 4221:

(i) The exemptions under section 4221 (a)(4) and (a)(5) do not apply to the tax imposed by section 4064 (gas guzzler tax).

(ii) The exemptions under section 4221 do not apply to the tax imposed by section 4081 (gasoline and diesel fuel tax).

(iii) The exemptions under section 4221 do not apply to the tax imposed by section 4091 (aviation fuel tax). For rules relating to tax-free sales of aviation fuel, see section 4092 and the regulations thereunder.

(iv) The exemptions under section 4221 do not apply to the tax imposed by section 4121 (coal tax).

(v) The exemptions under section 4221 (a)(3) through (a)(5) do not apply to the tax imposed by section 4131 (vaccine tax). In addition, the exemption under section 4221(a)(2) applies to the vaccine tax only to the extent provided in § 48.4221–3(e) (relating to tax-free sales of vaccine for export).

(vi) The exemptions under section 4221(a) apply only in those cases where the exportation or use referred to is to occur before any other use.

(b) * * *

(2) * * *

(v) Section 4221(e)(3) relating to the sale of tires used on intercity, local, or school buses (see § 48.4221–8).

* * * * *

Par. 35. Section 48.4221–2 is amended by:

1. Removing from the first sentence of paragraph (a)(1) the language ''(other than a tire or inner tube taxable under section 4071, which are given special treatment under sections 4221(e) (2) and (4), and §§ 48.4221–7 and 48.4221–8)'' and adding ''(other than a tire taxable under section 4071, which is given special treatment under section 4221(e)(2) and § 48.4221–7)'' in its place.

2. Removing paragraph (a)(2) and redesignating paragraph (a)(3) as paragraph (a)(2).

3. Revising paragraph (b).

The revision reads as follows:

§ 48.4221–2 Tax-free sale of articles to be used for, or resold for, further manufacture.

* * * * *

(b) *Circumstances under which an article is considered to have been sold for use in further manufacture.* (1) An article shall be treated as sold for use in further manufacture if the article is sold for use by the buyer as material in the manufacture or production of, or as a component part of, another article taxable under chapter 32 of the Internal Revenue Code.

(2) An article is used as material in the manufacture or production of, or as a component of, another article if it is incorporated in, or is a part or accessory of, the other article when the other article is sold by the manufacturer. In addition, an article is considered to be used as material in the manufacture of another article if it is consumed in whole or in part in testing such other article. However, an article that is consumed in the manufacturing process other than in testing, so that it is not a physical part of the manufactured article, is not considered to have been used as material in the manufacture of, or as a component part of, another article.

* * * * *

Par. 36. Section 48.4221–5 is amended as follows:

1. Paragraph (c)(1) is amended by:

a. Removing the first sentence.

b. Removing the language ''If a State or local government is not registered, the'' and adding ''The'' in its place in the new first sentence.

2. In paragraph (d), the first sentence is amended by:

a. Removing the language ''(whether on the basis of a registration number or an exemption certificate)''.

b. Removing the language ''(such as gasoline that is'' and adding ''(such as tires that are'' in its place.

§§ 48.4221–8, 48.4221–9, 48.4221–10 [Removed]

Par. 37. Sections 48.4221–8, 48.4221–9, and 48.4221–10 are removed.

§ 48.4221–11 [Redesignated as § 48.4221–8]

Par. 38. Section 48.4221–11 is redesignated as § 48.4221–8.

§ 48.4221–12 [Removed]

Par. 39. Section 48.4221–12 is removed.

Par. 40. In § 48.4222(a)–1, paragraphs (a) and (b) are revised to read as follows:

§ 48.4222(a)–1 Registration.

(a) *General rule.* Except as provided in § 48.4222(b)–1, tax-free sales under section 4221 may be made only if the manufacturer, first purchaser, and second purchaser, as the case may be, have been registered by the Internal Revenue Service.

(b) *Application instructions.* Application for registration under section 4222 must be made in accordance with instructions for Form 637 (or such other form as the Commissioner may designate).

* * * * *

Par. 41. In § 48.4222(b)–1, paragraph (a) is revised to read as follows:

§ 48.4222(b)–1 Exceptions to the requirement for registration.

(a) *State and local governments.* The Internal Revenue Service will not register State or local governments under section 4222. To establish the right to sell articles tax free to a State or local government, the manufacturer must obtain the information described in § 48.4221–5(c).

* * * * *

§ 48.4222(d)–1 [Amended]

Par. 42. Section 48.4222(d)–1 is amended by:

1. Removing paragraphs (a), (b), and (c).

2. Redesignating paragraph (d) as paragraph (a).

3. Removing paragraphs (e) and (f).

4. Redesignating paragraph (g) as paragraph (b).

§ 48.6206–1 [Removed]

Par. 43. Section 48.6206–1 is removed.

§ 48.6416(b)(2)–2 [Amended]

Par. 44. In § 48.6416(b)(2)–2, paragraphs (g) through (k) are removed.

§ 48.6416(g)–1 [Removed]

Par. 45. Section 48.6416(g)–1 is removed.

§ 48.6421–3 [Amended]

Par. 46. In § 48.6421–3, paragraph (d)(2) is amended by removing from the first sentence the language ''Form 843'' and adding ''Form 8849 (or on such other form as the Commissioner may designate)'' in its place.

§§ 6424–0 through 48.6424–6 [Removed]

Par. 47. Sections 48.6424–0 through 48.6424–6 are removed.

§ 48.6427–3 [Amended]

Par. 48. In § 48.6427–3, paragraph (d)(2) is amended by removing from the first sentence the language ''Form 843'' and adding ''Form 8849 (or on such other form as the Commissioner may designate)'' in its place.

§ 48.6427–7 [Amended]

Par. 49. In § 48.6427–7, paragraph (g)(4) is amended by removing the language ''Form 843 (Claim)'' and adding ''Form 8849 (or such other form as the Commissioner may designate)'' in its place.

Par. 50. Sections 48.6427–8 and 48.6427–9 are added to read as follows:

§ 48.6427–8 Claims by ultimate purchasers with respect to diesel fuel taxed after December 31, 1993.

(a) *Overview.* This section provides the rules for obtaining a credit or payment with respect to undyed diesel fuel that was taxed after December 31, 1993, and that was used in a nontaxable use (other than on a farm for farming purposes or by a State). A credit or payment for undyed diesel fuel used on a farm for farming purposes or by a State is allowable only to a registered ultimate vendor under the rules of § 48.6427–9.

(b) *Conditions to allowance of credit or payment*—(1) *In general.* Except as provided in section 6427(l)(5), a claim for credit or payment with respect to diesel fuel is allowable under section 6427(l) only if—

(i) Tax was imposed by section 4081 on the diesel fuel to which the claim relates;

(ii) The claimant produced or bought the fuel and did not resell it in the United States;

(iii) The claimant has filed a timely claim for a credit or payment that contains the information required under paragraph (d) of this section;

(iv) The fuel was not bought under a certificate described in § 48.6427–9(e)(2) (relating to certificate of farmer or State to support claim of ultimate vendor);

(v) The fuel was not used on a farm for farming purposes (as defined in § 48.6420–4) or by a State; and

(vi) The fuel was either—

(A) Used in a use described in § 48.4082–4 (c)(3) through (c)(10);

(B) Exported;

(C) Used other than as a fuel in a propulsion engine of a diesel-powered highway vehicle or diesel-powered boat;

(D) Used as a fuel in a propulsion engine of a diesel-powered train; or

(E) Used as a fuel in the propulsion engine of a diesel-powered bus if the bus was used in a use described in section 6427(b)(1) (after the application of section 6427(b)(3)).

(2) *Examples.* The following examples illustrate this paragraph (b).

Example 1. (i) In September 1996, F bought 250 gallons of undyed diesel fuel. In October 1996, F used 200 gallons of the fuel in a farm tractor. This use qualifies as use on a farm for farming purposes (as defined in § 48.6420–4). The farm tractor is not a diesel-powered highway vehicle (as defined in § 48.4081–1(h)). F used the remaining 50 gallons to heat F's residence. F filed a complete and timely claim for a credit relating to the 250 gallons.

(ii) A credit or payment is not allowable to F with respect to the 200 gallons of diesel fuel used in the farm tractor. Even though this fuel was used other than as a fuel in a propulsion engine of a diesel-powered highway vehicle (thus meeting the condition in paragraph (b)(1)(vi)(C) of this section), the condition in paragraph (b)(1)(v) of this section is not satisfied because the fuel was used on a farm for farming purposes.

(iii) A credit is allowable to F with respect to the 50 gallons F used for heating purposes because the conditions in paragraph (b)(1) of this section have been met. F used this fuel other than as a fuel in a propulsion engine of a diesel-powered highway vehicle and the use of the fuel for residential heating is not use on a farm for farming purposes.

Example 2. (i) In September 1996, W, a wholesale distributor, sold 3,500 gallons of diesel fuel on which tax has been imposed to C, a construction company located in the United States. W's selling price to C did not include an amount equal to the federal excise tax on the fuel. C used the fuel other than as a fuel in a propulsion engine of a diesel-powered highway vehicle or diesel-powered boat. Both W and C file a complete and timely claim for a credit relating to the fuel.

(ii) Because W resold the fuel in the United States, the condition of paragraph (b)(1)(ii) of this section is not met. Thus, W is not allowed a credit or payment with respect to the fuel.

(iii) C is eligible for a credit or payment with respect to the fuel because the conditions to allowance in paragraph (b)(1) of this section have been met. The conditions to allowance do not include a requirement that C buy the fuel at a price that includes the amount of the tax.

(c) *Form of claim.* Each claim for an income tax credit under this section must be made on Form 4136 (or on such other form as the Commissioner may designate) in accordance with the instructions for that form. Each claim for a payment under this section must be made on Form 8849 (or on such other form as the Commissioner may designate) in accordance with the instructions for that form.

(d) *Content of claim.* Each claim for a credit or payment under this section must contain the following information with respect to all the diesel fuel covered by the claim:

(1) The total number of gallons covered by the claim.

(2) A statement by the claimant that tax has been imposed on the diesel fuel covered by the claim.

(3) The use made of the diesel fuel covered by the claim described by reference to specific categories listed in paragraph (b)(1)(vi) of this section (such as use in a boat employed in commercial fishing or the exclusive use of a nonprofit educational organization).

(4) If the diesel fuel covered by the claim was exported, a declaration that the claimant has proof of exportation (as described in § 48.4221–3(d)(1)).

(5) A declaration that the claimant has in its possession the name and address of the person(s) that sold the diesel fuel to the claimant and the date(s) of the purchase(s).

(e) *Time and place for filing claim.* For rules relating to the time for filing a claim under section 6427, see section 6427(i). A claim under this section is not filed unless it contains all the information required by paragraph (d) of this section and is filed at the place required by the form.

(f) *Effective date.* This section is effective January 1, 1994, except for paragraph (b)(1)(v) of this section, which is effective for diesel fuel bought by ultimate purchasers after June 30, 1994.

§ 48.6427–9 Claims by registered ultimate vendors with respect to diesel fuel taxed after December 31, 1993.

(a) *Overview.* This section provides the rules for obtaining a credit or payment with respect to undyed diesel fuel that was taxed after December 31, 1993, and that was used on a farm for farming purposes or by a State.

(b) *Definitions.* (1) An *ultimate vendor,* as used in this section, is a person that sells undyed diesel fuel to—

(i) The owner, tenant, or operator of a farm for use by such person on a farm for farming purposes (as defined in § 48.6420–4);

(ii) A person other than the owner, tenant, or operator of a farm for use by such person for any of the purposes described in § 48.6420–4(d) (relating to cultivating, raising, or harvesting); or

(iii) Any State for its exclusive use.

(2) A *registered ultimate vendor* is—

(i) An ultimate vendor that is registered under section 4101 as an ultimate vendor; or

(ii) With respect to a claim filed before January 1, 1995, an ultimate vendor that is registered as a producer of diesel fuel on December 31, 1993, if the registration has not been revoked or suspended.

(c) *Conditions to allowance of credit or payment.* A claim for a credit or payment with respect to diesel fuel is

allowable under section 6427(l)(5) only if—

(1) Tax was imposed by section 4081 on the diesel fuel to which the claim relates;

(2) The claimant sold the diesel fuel to—

(i) The owner, tenant, or operator of a farm for use by such person on a farm for farming purposes (as defined in § 48.6420–4);

(ii) A person other than the owner, tenant, or operator of a farm for use by such person for any of the purposes described in § 48.6420–4(d) (relating to cultivating, raising, or harvesting); or

(iii) Any State for its exclusive use;

(3) The claimant is a registered ultimate vendor; and

(4) The claimant has filed a timely claim for a credit or payment that contains the information required under paragraph (e) of this section.

(d) *Form of claim*. Each claim for an income tax credit under this section must be made on Form 4136 (or on such other form as the Commissioner may designate) in accordance with the instructions for that form. Each claim for a payment under this section must be made on Form 8849 (or on such other form as the Commissioner may designate) in accordance with the instructions for that form.

(e) *Content of claim*—(1) *In general.* Each claim for credit or payment under this section must contain the following information with respect to all the diesel fuel covered by the claim:

(i) The total number of gallons covered by the claim.

(ii) A statement by the claimant that tax has been imposed on the diesel fuel covered by the claim.

(iii) The claimant's registration number.

(iv) The name and taxpayer identification number of each person that bought diesel fuel from the claimant in a transaction described in paragraph (c)(2) of this section and the number of gallons that the claimant sold to that person.

(v) A statement that the claimant—

(A) Has not included the amount of the tax in its sales price of the diesel fuel and has not collected the amount of tax from its buyer;

(B) Has repaid the amount of the tax to the ultimate purchaser of the fuel; or

(C) Has obtained the written consent of its buyer to the allowance of the claim.

(vi) For claims relating to sales by the claimant after March 31, 1994, a statement that the claimant has in its possession an unexpired certificate described in paragraph (e)(2) of this section and the claimant has no reason to believe any information in the certificate is false.

(vii) For claims relating to sales by the claimant before April 1, 1994, either the statement described in paragraph (e)(1)(vi) of this section or a statement that—

(A) The claimant has in its possession an unexpired exemption certificate relating to tax-free sales of diesel fuel for use on a farm for farming purposes or for the exclusive use of a State;

(B) The certificate was received from the buyer before January 1, 1994; and

(C) The claimant has no reason to believe any information in the certificate is false.

(2) *Certificate*—(i) *In general.* The certificate to be provided to the ultimate vendor consists of a statement that is signed under penalties of perjury by a person with authority to bind the buyer, is in substantially the same form as the model certificate provided in paragraph (e)(2)(ii) of this section, and contains all information necessary to complete such model certificate. A new certificate must be given if any information in the current certificate changes. The certificate may be included as part of any business records normally used to document a sale. The certificate expires on the earlier of the following dates:

(A) The date one year after the effective date of the certificate.

(B) The date a new certificate is provided to the seller.

(ii) *Model certificate.*

Certificate of Farming Use or State Use

(To support vendor's claim for a credit or payment under section 6427 of the Internal Revenue Code.)

_____

_____

Name, address, and employer identification number of vendor

The undersigned buyer (''Buyer'') hereby certifies the following under penalties of perjury:

Buyer will use the diesel fuel to which this certificate relates—(check one)

_____ On a farm for farming purposes (as defined in § 48.6420–4(c) of the Manufacturers and Retailers Excise Tax Regulations) and Buyer is the owner, tenant, or operator of the farm on which the fuel will be used;

_____ On a farm (as defined in § 48.6420–4(c)) for any of the purposes described in paragraph (d) of that section (relating to cultivating, raising, or harvesting) and Buyer is a person that is not the owner, tenant, or operator of the farm on which the fuel will be used; or

_____ For the exclusive use of a State or local government, or the District of Columbia.

This certificate applies to the following (complete as applicable):

If this is a single purchase certificate, check here _____ and enter:

1. Invoice or delivery ticket number _____

2. _____ (number of gallons)

If this is a certificate covering all purchases under a specified account or order number, check here _____ and enter:

1. Effective date _____

2. Expiration date _____ (period not to exceed 1 year after the effective date)

3. Buyer account or order number _____

Buyer will provide a new certificate to the vendor if any information in this certificate changes.

If Buyer uses the diesel fuel to which this certificate relates for a purpose other than stated in the certificate Buyer will be liable for tax.

Buyer understands that the fraudulent use of this certificate may subject Buyer and all parties making such fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

_____

Printed or typed name of person signing

_____

Title of person signing

_____

Name of Buyer

_____

Employer identification number

_____

Address of Buyer

_____

Signature and date signed

(f) *Time and place for filing claim*. For rules relating to the time for filing a claim under section 6427, see section 6427(i). A claim under this section is not filed unless it contains all the information required by paragraph (e) of this section and is filed at the place required by the form.

(g) *Effective date.* This section is effective January 1, 1994.

§§ 48.6427–8T and 48.6427–9T [Removed]

Par. 51. Sections 48.6427–8T and 48.6427–9T are removed.

§ 48.6675–1 [Removed]

Par. 52. Section 48.6675–1 is removed.

Par. 53. Section 48.6714–1 is added to read as follows:

§ 48.6714–1 Penalty for misuse of dyed diesel fuel.

(a) *In general.* If any person willfully alters, or attempts to alter, the strength or composition of any dye or marking done pursuant to § 48.4082–1 in any dyed fuel, then section 6714(a)(3) provides that such person shall pay a penalty in addition to any tax. The penalty imposed by section 6714(a)(3) will not apply in the following cases:

(1) Diesel fuel that satisfies the dyeing and marking requirements of § 48.4082–1 (b) and (c) is blended with any undyed liquid and the resulting product satisfies the dyeing and marking requirements of § 48.4082–1 (b) and (c).

(2) Diesel fuel that satisfies the dyeing and marking requirements of § 48.4082–1 (b) and (c) is blended with any other liquid (other than diesel fuel) that contains the type and amount of dye and marker required for diesel fuel dyed and marked in accordance with § 48.4082–1 (b) and (c).

(3) Diesel fuel that is dyed one color in accordance with § 48.4082–1(b) is blended with diesel fuel that is dyed another color in accordance with § 48.4082–1(b).

(4) Diesel fuel that does not satisfy the dyeing and marking requirements of § 48.4082–1 (b) and (c) is blended with diesel fuel that satisfies the dyeing and marking requirements of § 48.4082–1 (b) and (c) and the blending occurs as part of a use described in § 48.4082–4(c) or § 48.6427–8(b)(vi) (C), (D), or (E).

(b) *Effective date.* This section is effective January 1, 1994.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 54. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 55. In § 602.101, paragraph (c) is amended as follows:

1. Removing the following entries from the table:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control number
* * * * *	
42.5(b)	1545–1206
* * * * *	
48.4041–2T	1545–0143
* * * * *	
48.4082–2T	1545–1418
48.4101–1	1545–0023
	1545–0725
	1545–0014
48.4101–2T	1545–0725
48.4101–3T	1545–1418
48.4101–4T	1545–1418
* * * * *	
48.6427–8T	1545–1418
48.6427–9T	1545–1418
* * * * *	

2. Adding entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control number
* * * * *	
48.4082–2	1545–1418
48.4101–1	1545–1418
48.4101–2	1545–1418
* * * * *	
48.6427–8	1545–1418
48.6427–9	1545–1418
* * * * *	

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 18, 1995.

Leslie Samuels.

Assistant Secretary of the Treasury.

[FR Doc. 96–5586 Filed 3–13–96; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Subchapter D and Part 81

[CGD 95–053]

RIN 2115–AF16

Removal of 72 Colregs Text From CFR and Revision of Subchapter D Note

AGENCY: Coast Guard, DOT.

ACTION: Direct Final rule; confirmation of effective date.

SUMMARY: On January 2, 1996, the Coast Guard published a direct final rule (61 FR 8) which notified the public of the Coast Guard's intent to remove the text of the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) from the CFR, which merely duplicates text found in the United States Code. This rule also updates the note containing a list of U.S. territories and possessions where the 72 COLREGS apply. The Coast Guard has not received any adverse comments or any notice of an intent to submit adverse comments objecting to this rule as written. Therefore, this rule will go into effective as scheduled.

DATES: The effective date of the direct final rule is confirmed as April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Diane Schneider-Appleby, Vessel Traffic Management Division (G–MVO), at 202–267–0352.

Dated: March 7, 1996.

G.N. Naccara,

Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 96–6157 Filed 3–13–96; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD09–95–022]

RIN 2115–AE47

Drawbridge Operation Regulations; Buffalo River, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing regulations governing the operation of the Michigan Avenue bridge, mile 1.3, Ohio Street bridge, mile 2.1, South Park Avenue bridge, mile 5.3, and the Conrail railroad bridges at miles 4.02 and 4.39 across the Buffalo River, all at Buffalo, NY, by not requiring drawtenders to be in constant attendance at these bridges. This action will relieve the bridge owners of the burden of having drawtenders in constant attendance at their bridges and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This rule becomes effective on March 22, 1996.

ADDRESSES: Documents concerning this regulation are available for inspection and copying at 1240 East Ninth Street, Room 2083D, Cleveland, OH 44199–2060 between 6:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (216) 522–3993.

FOR FURTHER INFORMATION CONTACT: Mr. Scot M. Striffler, Project Manager, Bridge Branch at (216) 522–3993.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, good cause exists for making this final rule effective less than 30 days after publication in the Federal Register. A delay in effective date is impracticable and contrary to the public interest because the schedule changes set forth in this rule will be implemented by the City of Buffalo on March 22, 1996. A delay is also unnecessary because a notice of proposed rulemaking was published and the Coast Guard queried the affected navigation interests prior to this action and received no objections.

Regulatory History

On October 26, 1995, the Coast Guard published a notice of proposed rulemaking entitled ''Drawbridge Operation Regulations; Buffalo River, NY'' in the Federal Register (60 FR 54823). No comments were received. A public hearing was not requested and therefore, was not held.

Background and Purpose

The City of Buffalo requested and received approval to remove drawtenders from its bridges during the

winter months on an annual basis in accordance with 33 CFR 117.45.

The City requested that it not be required to keep a drawtender in constant attendance at the Ohio Street bridge and that the drawtender from the Michigan Avenue bridge be used as a roving drawtender to open the Ohio Street bridge for the passage of vessels. Additionally, the city requested that the South Park Avenue bridge, and two Conrail railroad bridges, be allowed to remove drawtenders throughout the year with a requirement to open on signal only when notice is received at least four hours in advance of a vessel's time of intended passage through the draws.

The Coast Guard determined that the removal of drawtenders from these bridges, the advance notice requirement, and the establishment of a roving drawtender at Michigan Avenue bridge would not seriously impact navigation or business on the Buffalo River.

Discussion of Comments and Changes

No comments were received in response to the notice of proposed rulemaking. The Coast Guard queried navigation interests prior to this action and received no objections. Language to amend Appendix A of Part 117 (Drawbridges equipped with radiotelephones) did not appear in the NPRM but has been added to this final rule to facilitate efficient communication between vessels and the Michigan Avenue drawtender, and to enhance safety. In order to clarify radiotelephone procedures, paragraph (f) in the NPRM was revised and moved to paragraph (b)(3) in the final rule.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. We conclude this because the impact on navigation is minimal and all marine interests in the area agreed to the change during preliminary discussions. Also, the requirement to maintain a marine radiotelephone will enable the roving drawtender to keep in communication with a transiting vessel, which will allow the vessel to begin approaching the draw in a more timely manner.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. Small entities include independently owned and operated small businesses that are not dominant in their field and otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). Since the final rule allows the owners of the highway and railroad bridges to remove bridgetenders from the bridges where there is not significant vessel traffic on the Buffalo River, and because those vessels that would transit the river during these times can do so by giving notice in advance of their time of intended passage through the draw, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

For reasons set out in the preamble, 33 CFR Part 117 is revised as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows.

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. § 117.773 is revised to read as follows:

§ 117.773 Buffalo River.

(a) The draw of the Michigan Avenue bridge, mile 1.3, at Buffalo, shall operate as follows:

(1) From March 22 through December 15, the draw shall open within 20 minutes of signal. However, the draw need not open from 7:30 a.m. to 9 a.m., and from 4 p.m. to 5:45 p.m., Monday through Saturday.

(2) From December 16 through March 21, the draw shall open on signal if notice is given at least 4 hours in advance of a vessel's time of intended passage through the draw.

(b) The draw of the Ohio Street bridge, mile 2.1, at Buffalo, shall operate as follows:

(1) From March 22 through December 15, the draw shall open on signal within 20 minutes after a request is made to the Michigan Avenue drawtender. However, the draw need not open from 7:30 a.m. to 9 a.m., and from 4 p.m. to 5:45 p.m., Monday through Saturday.

(2) From December 16 through March 21, the draw shall open on signal if notice is given at least 4 hours in advance of a vessel's time of intended passage through the draw.

(3) In addition to the standard signals required for requesting the bridge to open, the owners of this bridge shall maintain and monitor a marine radiotelephone for use by the Michigan Avenue drawtender for receiving requests for opening the Ohio Street bridge. The drawtender shall maintain communications with any transiting vessel until the vessel has cleared both the Ohio Street and Michigan Avenue draws.

(c) The draws of the Conrail railroad bridges, miles 4.02 and 4.39, both at Buffalo, shall open on signal if notice is given at least 4 hours in advance of a vessel's time of intended passage through the draws.

(d) The South Park Avenue bridge, mile 5.3, at Buffalo, shall open on signal if notice is given at least 4 hours in advance of a vessel's time of intended passage through the draw. However, the draw need not open from 7 a.m. to 8:30 a.m., and from 4:30 p.m. to 6 p.m., Monday through Saturday.

(e) The periods when the bridges need not open on signal prescribed in paragraphs (a)(1), (b)(1), and (d) in this section shall not be effective on Sundays, and on New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day,

or days observed in lieu of any of these under State law.

3. Appendix A to Part 117 is amended by adding the Buffalo River under the State of New York subheading to read as follows:

APPENDIX A TO PART 117.—DRAWBRIDGES EQUIPPED WITH RADIOTELEPHONES

Waterway	Mile	Location	Bridge name and owner	Call sign	Calling channel	Working channel
*	*	*	*	*	*	*
New York:						
*	*	*	*	*	*	*
Buffalo River ...	1.3	Buffalo	Michigan Ave., Buffalo City	WXY 998	16	13
*	*	*	*	*	*	*

Dated: February 15, 1996.

G.F. Woolever,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 96–6055 Filed 3–13–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 418

Fertilizer Manufacturing Point Source Category

CFR Correction

In title 40 of the Code of Federal Regulations, parts 400 to 424, revised as of July 1, 1995, on page 336, in § 418.12 paragraphs (a), (b), and (c) introductory text were inadvertently removed and the source note appearing under the first table should be removed. The omitted text should precede the table and read as follows:

§ 418.12 Effluent limitations and guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

* * * * *

(a) Subject to the provisions of paragraphs (b) and (c) of this section, the following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available: There shall be no discharge of process wastewater pollutants to navigable waters.

(b) Process wastewater pollutants from a calcium sulfate storage pile runoff facility operated separately or in combination with a water recirculation system designed, constructed and operated to maintain a surge capacity equal to the runoff from the 10-year, 24-hour rainfall event may be discharged, after treatment to the standards set forth in paragraph (c) of this section, whenever chronic or catastrophic precipitation events cause the water level to rise into the surge capacity. Process wastewater must be treated and discharged whenever the water level equals or exceeds the mid point of the surge capacity.

(c) The concentration of pollutants discharged in process wastewater pursuant to the limitations of paragraph (b) shall not exceed the values listed in the following table:

* * * * *

BILLING CODE 1505–01–D

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW, Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact

stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Coconino (FEMA Docket No. 7160).	City of Flagstaff	Sept. 21, 1995, Sept. 28, 1995, *Arizona Daily Sun*.	The Honorable Christopher J. Bavasi, Mayor, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001.	Aug. 16, 1995	040020
Coconino (FEMA Docket No. 7160).	City of Flagstaff	Sept. 22, 1995, Sept. 29, 1995, *Arizona Daily Sun*.	The Honorable Christopher J. Bavasi, Mayor, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001.	Aug. 17, 1995	040020
Maricopa (FEMA Docket No. 7160).	City of Glendale	Aug. 31, 1995, Sept. 7, 1995, *Arizona Republic*.	The Honorable Elaine Scruggs, Mayor, City of Glendale, 5850 West Glendale Avenue, Glendale, Arizona 85301.	Aug. 7, 1995	040045
Maricopa (FEMA Docket No. 7160).	Unincorporated Areas .	Aug. 31, 1995, Sept. 7, 1995, *Arizona Republic*.	The Honorable Tom Rawles, Chairperson, Maricopa County Board of Supervisors, 301 West Jefferson, Phoenix, Arizona 85003.	Aug. 7, 1995	040037
Pima (FEMA Docket No. 7156).	Town of Oro Valley	July 27, 1995, Aug. 3, 1995, *Daily Territorial*.	The Honorable Cheryl Skalsky, Mayor, Town of Oro Valley, 11000 North La Canada Drive, Oro Valley, Arizona 85737.	June 27, 1995	040109
Maricopa (FEMA Docket No. 7160).	City of Peoria	Aug. 31, 1995, Sept. 7, 1995, *Arizona Republic*.	The Honorable Ken C. Forgia, Mayor City of Peoria, 8401 West Monroe, Peoria, Arizona 85345.	Aug. 7, 1995	040050

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Pima (FEMA Docket No. 7156).	Unincorporated Areas .	July 27, 1995, Aug. 3, 1995, *Daily Territorial*.	The Honorable Paul Marsh, Chairman, Pima County Board of Supervisors, 130 West Congress Street, Fifth Floor, Tuscon, Arizona 85701.	June 27, 1995	040073
Pima (FEMA Docket No. 7152).	City of Tucson	July 13, 1995, July 20, 1995, *Arizona Daily Star*.	The Honorable George Miller, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85710–7210.	June 26, 1995	040076
California:					
Contra Costa (FEMA Docket No. 7156).	Unincorporated Areas .	Aug. 18, 1995, Aug. 25, 1995, *West County Times*.	The Honorable Gayle Bishop, Chairperson, Contra Costa County Board of Supervisors, 18 Crow Canyon Court, Suite 120, San Ramon, California 94583.	July 17, 1995	060025
Santa Clara (FEMA Docket No. 7160).	City of Gilroy	Sept. 22, 1995, Sept. 29, 1995, *Dispatch*.	The Honorable Don F. Gage, Mayor, City of Gilroy, 7351 Rosanna Street, Gilroy, California 95020.	Aug. 31, 1995	060340
Contra Costa (FEMA Docket No. 7156).	City of Richmond	Aug. 18, 1995, Aug. 25, 1995, *West County Times*.	The Honorable Rosmary Corbin, Mayor, City of Richmond, 2600 Barrett Avenue, Richmond, California 94804.	July 17, 1995	060035
Riverside (FEMA Docket No. 7156).	City of Riverside	July 28, 1995, Aug. 4, 1995, *Press Enterprise*.	The Honorable Ron Loveridge, Mayor, City of Riverside, 3900 Main Street, Riverside, California 92522.	July 7, 1995	060260
Sacramento (FEMA Docket No. 7156).	Unincorporated Areas .	Aug. 4, 1995, Aug. 11, 1995, *Sacramento Bee*.	Mr. Douglas M. Fraleigh, Administrator, Sacramento County Public Works Agency, 827 Seventh Street, Room 304, Sacramento, California 95814.	July 3, 1995	060262
Contra Costa (FEMA Docket No. 7156).	City of San Ramon	July 27, 1995, Aug. 3, 1995, *Valley Times*.	The Honorable Greg Carr, Mayor, City of San Ramon, 2222 Camino Ramon, San Ramon, California 94583.	July 5, 1995	060710
Santa Barbara (FEMA Docket No. 7156).	Unincorporated Areas .	July 28, 1995, Aug. 4, 1995, *Santa Barbara News-Press*.	The Honorable Timothy J. Staffel, Chairperson, Santa Barbara County Board of Supervisors, 105 East Anapamu Street, Fourth Floor, Santa Barbara, California 93101.	June 30, 1995	060331

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Santa Clara (FEMA Docket No. 7160).	Unincorporated Areas .	Sept. 22, 1995, Sept. 29, 1995, *San Jose Mercury News*.	The Honorable Mike M. Honda, Chairman, Santa Clara County Board of Supervisors, County Government Center, 70 West Hedding Street, East Wing, Tenth Floor, San Jose, California 95110.	Aug. 31, 1995	060337
Solano (FEMA Docket No. 7156).	City of Vacaville	Aug. 24, 1995, Aug. 31, 1995, *Reporter*.	The Honorable David A. Fleming, Mayor, City of Vacaville, 650 Merchant Street, Vacaville, California 95688.	July 28, 1995	060373
Colorado:					
Adams, Boulder and Jefferson (FEMA Docket No. 7160).	City of Broomfield	Aug. 31, 1995, Sept. 7, 1995, *Daily Camera*.	The Honorable Bill Berens, Mayor, City of Broomfield, P.O. Box 1415, Broomfield, Colorado 80038–1415.	Aug. 2, 1995	085073
El Paso (FEMA Docket No. 7156).	City of Colorado Springs.	Aug. 4, 1995, Aug. 11, 1995, *Gazette Telegraph*.	The Honorable Robert Isaac, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, Colorado 80901.	July 14, 1995	080060
Adams (FEMA Docket No. 7156).	City of Thornton	Aug. 25, 1995, Sept. 1, 1995, *Denver Post*.	The Honorable Margaret Carpenter, Mayor, City of Thornton, P.O. Box 291220, Thornton, Colorado 80229–1220.	July 25, 1995	080007
Iowa:					
Johnson (FEMA Docket No. 7156).	City of Coralville	July 28, 1995, Aug. 4, 1995, *Iowa City Press Citizen*.	The Honorable Allan Axeen, Mayor, City of Coralville, 1512 Seventh Street, Coralville, Iowa 52241.	July 10, 1995	190169
Polk (FEMA Docket No. 7156).	City of Grimes	Aug. 18, 1995, Aug. 25, 1995, *Des Moines Register*.	The Honorable Brad Long, Mayor, City of Grimes, P.O. Box 460, Grimes, Iowa 50111.	July 19, 1995	190228
Johnson (FEMA Docket No. 7156).	City of Iowa City	July 28, 1995, Aug. 4, 1995, *Iowa City Press Citizen*.	The Honorable Susan Horowitz, Mayor, City of Iowa City, 410 East Washington Street, Iowa City, Iowa 52240.	July 10, 1995	190171
Polk (FEMA Docket No. 7160).	Unincorporated Areas .	Sept. 22, 1995, Sept. 29, 1995, *The Des Moines Register*.	The Honorable Jack Bishop, Chairman, Polk County Board of Supervisors, 111 Court Avenue, Room 300, Des Moines, Iowa 50309.	Aug. 14, 1995	190901
Oregon:					
Marion and Polk (FEMA Docket No. 7156).	City of Salem	Aug. 24, 1995, Aug. 31, 1995, *Statesman-Journal*.	The Honorable Roger Gertenrich, Mayor, City of Salem, City Hall, 555 Liberty Street, Southeast, Salem, Oregon 97301–3503.	July 20, 1995	410167
South Dakota:					

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Pennington (FEMA Docket No. 7156).	City of Rapid City	Aug. 21, 1995, Aug. 28, 1995, *Rapid City Journal*.	The Honorable Edward McLaughlin, Mayor, City of Rapid City, 300 Sixth Street, Rapid City, South Dakota 57701–2724.	July 20, 1995	465420
Texas:					
Tarrant (FEMA Docket No. 7160).	City of Forest Hill	Aug. 31, 1995, Sept. 7, 1995, *Forest Hill News*.	The Honorable Esterlene Griffin, Mayor, City of Forest Hill, 6800 Forest Hill Drive, Forest Hill, Texas 76140–1299.	July 28, 1995	480595
Lubbock (FEMA Docket No. 7152).	City of Lubbock	July 20, 1995, July 27, 1995, *Lubbock Avalanche-Journal*.	The Honorable David Langston, Mayor, City of Lubbock, P.O. Box 2000, Lubbock, Texas 79457.	June 29, 1995	480452
Tarrant (FEMA Docket No. 7160).	City of Richland Hills ...	Sept. 21, 1995, Sept. 28, 1995, *Mid-Cities News*.	The Honorable Tommy Brown, Mayor, City of North Richland Hills, P.O. Box 820609, North Richland Hills, Texas 76182–0609.	Aug. 17, 1995	480607
Bexar (FEMA Docket No. 7160).	City of San Antonio	Sept. 19, 1995, Sept. 26, 1995, *San Antonio Express News*.	The Honorable William B. Thornton, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966.	Aug. 14, 1995	480045
Bexar, Comal, and Guadalupe (FEMA Docket No. 7156).	City of Selma	Aug. 3, 1995, Aug. 10, 1995, *San Antonio Express News*.	The Honorable Harold Friesen-hahn, Mayor, City of Salem, 9375 Corporate Drive, Selma, Texas 78154.	July 12, 1995	480046

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: March 7, 1996.

Richard W. Krimm,

Acting Associate Director for Mitigation.

[FR Doc. 96–6084 Filed 3–13–96; 8:45 am]

BILLING CODE 6718–04–P

44 CFR Part 65

[Docket No. FEMA–7171]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director, Mitigation Directorate, reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW, Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas:					
Benton	Unincorporated Areas	Dec. 1, 1995, Dec. 8, 1995, *Benton County Daily Record.*	The Honorable Bruce Rutherford, Benton County Judge, P.O. Box 278, Bentonville, Arkansas 72712.	Nov. 3, 1995	050419
Benton	City of Rogers	Dec. 1, 1995, Dec. 8, 1995, *Benton County Daily Record.*	The Honorable John W. Sampier, Jr., Mayor, City of Rogers, 300 West Poplar, Rogers, Arkansas 72756.	Nov. 3, 1995	050013
Hawaii: Honolulu	City and County of Honolulu.	Dec. 7, 1995, Dec. 14, 1995, *Honolulu Advertiser.*	The Honorable Jeremy Harris, Mayor, City and County of Honolulu, 530 South King Street, Room 300, Honolulu, Hawaii 96813.	Nov. 13, 1995	150001
Texas:					
Tarrant	City of Arlington	Dec. 1, 1995, Dec. 8, 1995, *Fort Worth Star Telegram.*	The Honorable Richard Greene, Mahor, City of Arlington, P.O. Box 231, Arlington, Texas 76004–0231.	Nov. 10, 1995	485454
Dallas	City of Coppell	Dec. 1, 1995, Dec. 8, 1995, *Citizen's Advocate.*	The Honorable Tom Morton, Mayor, City of Coppell, P.O. Box 478, Coppell, Texas 75019.	Nov. 10, 1995	480170
Dallas	City of Dallas	Dec. 1, 1995, Dec. 8, 1995, *Dallas Morning News.*	The Honorable Ron Kirk, Mayor, City of Dallas, 1500 Marilla Street, Room 5E North, Dallas, Texas 75201.	Nov. 10, 1995	480171
Dallas, Ellis, and Tarrant.	City of Grand Prairie	Feb. 15, 1996, Feb. 22, 1996,*Grand Prairie Daily News.*	The Honorable Charles England, Mayor, City of Grand Prairie, 317 College Street, Grand Prairie, Texas 75053.	Nov. 10, 1995	485472

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Harris	Unincorporated Areas	Dec. 6, 1995, Dec. 13, 1995 *Houston Chronicle*.	The Honorable Jon Lindsay, Harris County Judge, 1001 Preston Street, Houston, Texas 77002.	Nov. 8, 1995	480287
Dallas	City of Irving	Dec. 1, 1995, Dec. 8, 1995, *Citizen's Advocate*.	The Honorable Bobby Joe Raper, Mayor, City of Irving, P.O. Box 152288, Irving, Texas 75015–2288.	Nov. 10, 1995	480180
Harrison	City of Marshall	Dec. 8, 1995, Dec. 15, 1995, *Marshall News Messenger*.	The Honorable Audrey Kriel, Mayor, City of Marshall, P.O. Box 698, Marshall, Texas 75671.	Nov. 13, 1995	480319
Collin	City of Murphy	Dec. 20, 1995, Dec. 27, 1995, *Wylie News*.	The Honorable Greg Singleton, Mayor, City of Murphy, 205 North Murphy road, Murphy, Texas 75094.	Nov. 30, 1995	480137
Collin	City of Plano	Dec. 20, 1995, Dec. 27, 1995, *Plano Star Courier*.	The Honorable James N. Muns, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086.	Nov. 30, 1995	480140

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: March 7, 1996.

Richard W. Krimm,

Acting Associate Director for Mitigation.

[FR Doc. 96–6083 Filed 3–13–96; 8:45 am]

BILLING CODE 6718–04–P

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW, Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the Federal Register.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform.

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
OKLAHOMA	
Stillwater (city), Payne County (FEMA Docket No. 7122)	
Stillwater Creek:	
Approximately 400 feet upstream of South Main Street (U.S. Highway 177)	*863
Approximately 300 feet downstream of South Western Road	*870
Approximately 300 feet downstream of East Bound Lane State Highway 51	*875
Approximately 600 feet downstream of North Stillwater Road	*881
Maps are available for inspection at the City Engineer's Office, City of Stillwater, 723 South Lewis, Stillwater, Oklahoma.	
Stillwater (city), Payne County (FEMA Docket No. 7153)	
Boomer Creek:	
At confluence with Stillwater Creek	*858
Just upstream of East 19th Avenue (corporate limits)	*859
Approximately 500 feet upstream of East 12th Avenue	*863
Approximately 950 feet downstream of South Perkins Road	*865
At confluence of East and West Boomer Creeks	*866
East Boomer Creek:	
At confluence with Boomer Creek	*866
Approximately 100 feet upstream of Virginia Avenue	*872
Approximately 100 feet upstream of Hall of Fame Avenue	*877
Approximately 300 feet downstream of East McElroy Road	*880
West Boomer Creek:	
At confluence with Boomer Creek	*866
Approximately 100 feet upstream of Virginia Avenue	*876
Approximately 200 feet upstream of South Husband Street	*885
Approximately 200 feet downstream of Knoblock Street	*892
Just downstream of Moore Avenue	*904
Approximately 700 feet upstream of Washington Street	*906
Approximately 50 feet upstream of Lakeview Road	*915
Maps are available for inspection at the Public Works Department, City of Stillwater, 723 South Lewis Street, Stillwater, Oklahoma.	

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: March 7, 1996.

Richard W. Krimm,

Acting Associate Director for Mitigation.

[FR Doc. 96–6082 Filed 3–13–96; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[CS Docket No. 96–46; FCC 96–99]

Open Video Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Report and Order eliminates the Commission's video dialtone, cross-ownership, and section 214 authorization rules. This order eliminates or modifies our rules in accordance with the Telecommunications Act of 1996. This order fulfills the mandate of the Telecommunications Act of 1996.

EFFECTIVE DATE: March 11, 1996.

FOR FURTHER INFORMATION, CONTACT: Rick Chessen or Larry Walke, Cable Services Bureau, (202) 416–0800.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in CS Docket No. 96–46, FCC No. 96–99, adopted March 11, 1996 and released March 11, 1996. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW, Washington, D.C. 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1919 M Street, NW, Washington, D.C. 20554.

Report and Order—Repeal of Video Dialtone Rules, Cross Ownership Rules, and Section 214 Requirements

1. Statutory Provisions

1. Subsection 302(b)(1) of the 1996 Act provides: ''Subsection (b) of section 613 (47 U.S.C. 533(b)) [i.e., the telephone company-cable cross-ownership restriction] is repealed.'' In addition, subsection 302(a) of the 1996 Act adds new subsection 651(c) of the Communications Act, which provides that a common carrier shall no longer be required to obtain a certificate under Section 214 to establish or operate a system for the delivery of video programming. Finally, subsection 302(b)(3) of the 1996 Act states: ''The Commission's regulations and policies with respect to video dialtone requirements issued in CC Docket No. 87–266 shall cease to be effective on the date of enactment of this Act.'' This provision also states: ''This paragraph shall not be construed to require the termination of any video-dialtone system that the Commission has approved before the date of enactment of this Act.'' The conference report further provides that ''[r]epeal of the Commission's video dialtone regulations is not intended to alter the status of any video dialtone service offered before the regulations required by this section become effective.''

2. Discussion

2. In this order we modify our rules to conform to sections 302(b)(1) and 302(b)(3) of the 1996 Act, which repealed the telephone-cable cross-ownership restriction and eliminated our video dialtone rules and policies upon enactment. We also hereby terminate the docket in which our video dialtone rules and policies were promulgated (CC Docket No. 87–266). Further, we hereby revoke: (1) The Common Carrier Bureau's Memorandum Opinion and Order adopting subsidiary

accounting and reporting requirements for video dialtone; and (2) Responsible Accounting Officer Letter 25 (''*RAO Letter 25*''), which sets forth specific guidelines for accounting classifications, subsidiary records, and amendments to cost allocation manuals for video dialtone. Finally, consistent with subsection 302(b)(3) of the 1996 Act, we do not require currently approved video dialtone systems to cease operations.

3. In addition, in order to conform our rules to new section 651(c) of the Communications Act, we modify our rules to the extent they relate to any requirement that a common carrier obtain a certificate under Section 214 to establish or operate a video programming delivery system. Pursuant to subsection 651(c), we will no longer require that a common carrier obtain Section 214 authorization to establish or operate a video programming delivery system, even a video programming delivery system provided on a common carrier basis pursuant to Title II of the Communications Act.

Final Regulatory Flexibility Analysis

4. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, the Commission's Flexibility Analysis with respect to the Report and Order is as follows:

5. *Need and purpose of this action:* The Commission issues this Report and Order to enact or revise rules governing telephone companies' provision of video programming in response to the 1996 Act.

6. *Significant Alternatives considered:* Not applicable.

7. *Federal rules that overlap, duplicate or conflict with these rules:* None.

Paperwork Reduction Act

8. Paperwork Reduction Act Statement: The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995. None of the modifications made to the rules in this proceeding should increase the information collection requirements on the public.

Effective Date

9. The elimination of the rules concerning video dialtone, cross-ownership and Section 214 authorization for the delivery of video adopted in the Report and Order were effective upon enactment of the 1996 Act, and we amend these rules to conform to those statutory changes.

Ordering Clauses

10. It is ordered that the Commission's regulations and policies with respect to video dialtone requirements issued in CC Docket No. 87–266 are hereby removed.

11. It is further ordered that CC Docket No. 87–266 is hereby terminated.

12. It is further ordered that the Commission's regulations are hereby amended as set forth below.

13. It is further ordered that the Common Carrier Bureau's Memorandum Opinion and Order adopting subsidiary accounting and reporting requirements for video dialtone, and *RAO Letter* 25 (except with respect to the ATM equipment issue, as noted above) are hereby revoked.

14. It is further ordered that in light of the 1996 Act's termination of the Commission's rules and policies concerning video dialtone, we find for good cause that notice and comment on the actions taken herein would be impracticable, unnecessary and contrary to the public interest. *See* 5 U.S.C. 553(b)(B).

15. It is further ordered that the Secretary shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601, et seq. (1981)

16. For additional information regarding this proceeding, contact Rick Chessen or Larry Walke, Policy & Rules Division, Cable Services Bureau (202) 416–0800.

List of Subjects in 47 CFR Part 63

Cable television, Communications common carriers, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 63 of title 47 of the Code of Federal Regulations is amended as follows:

PART 63—EXTENSION OF LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

1. The authority citation for part 63 continues to read as follows:

Authority: Sections 1, 4(i), 4(j), 201–205, 218 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 218 and 403, unless otherwise noted.

2. Section 63.08 is amended by adding a colon after ''are'' before paragraph (a)(i), removing paragraph (a)(i), redesignating (a)(ii) and (a)(iii) as paragraphs (a)(1) and (a)(2), respectively, removing the second sentence of newly redesignated paragraph (a)(2), revising the second sentence of paragraph (b), revising paragraph (c), and adding paragraph (e) to read as follows:

§ 63.08 Lines outside of a carrier's exchange telephone service area.

* * * * *

(b) * * * ''Nondominant'' is defined as in § 61.15(a) of this chapter.

(c) A common carrier or its affiliate is not required to file for authority pursuant to 47 U.S.C. 214 and § 63.01 to discontinue, reduce, or impair other non-common carrier service.

* * * * *

(e) As used above, the term ''affiliate'' bars any financial or business relationship whatsoever by contract or otherwise, directly or indirectly between the carrier and the customer, except only the carrier-user relationship.

Note to Paragraph (e): Examples of situations in which a carrier and its customer will be deemed to be controlled or having a relationship include the following, among others: Where one is the debtor or creditor of the other (except with respect to charges for communication services); where they have a common officer, director, or other employee at the management level; where there is any element of ownership or other financial interest by one in the other; and where any part has a financial interest in both.

§ 63.09 [Removed]

3. Section 63.09 is removed.

§ 63.16 [Removed]

4. Section 63.16 is removed.

§ 63.52 [Amended]

5. Section 63.52(b) is amended by removing the reference to ''63.54,''.

§§ 63.54–63.58 [Removed]

6. Sections 63.54 through 63.58 and the undesignated center heading preceding them are removed.

[FR Doc. 96–6145 Filed 3–11–96; 3:40 pm]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[Docket No. PS–102, Notice No. 5]

Control of Drug Use and Alcohol Misuse in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations; Alcohol Misuse Prevention Program

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Correction of notice number.

SUMMARY: This document corrects the notice number of document 96–3305 published in the Federal Register on Wednesday, February 14, 1996 (61 FR 5722). In the document heading on page 5722, the notice number ''Notice No. 1'' is changed to read ''Notice No. 5.'' The notice states the availability of guidelines and interpretations for the Alcohol Misuse Prevention Program.

FOR FURTHER INFORMATION CONTACT: Ms. Catrina Pavlik, Drug/Alcohol Program Analyst, Office of Pipeline Safety, Research and Special Programs Administration, Department of Transportation, Room 2335, 400 Seventh Street SW., Washington, DC 20590–0001; (202) 366–6199.

Issued in Washington, DC on March 1, 1996.

Richard B. Felder,

Associate Administrator, Office of Pipeline Safety.

[FR Doc. 96–6067 Filed 3–13–96; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

Threatened Fish and Wildlife

Correction

In title 50 of the Code of Federal Regulations, parts 200 to 599, revised as of October 1, 1995, page 147, § 227.72 is corrected by moving paragraphs (B) and (C) in the first column to page 146 to appear after paragraph (e)(2)(iii)(A). The corrected text for paragraph (e)(2)(iii) reads as follows:

§ 227.72 Exceptions to prohibitions.

* * * * *

(e)* * *

(2)* * *

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

(B) *Monitoring.* Summer flounder trawlers must carry onboard a NMFS–approved observer if requested upon written notification from the Director Southeast Region, NMFS, or the Director, Northeast Region, NMFS, sent to the address specified for the vessel in either the NMFS or state fishing permit application, or to the address specified for registration or documentation purposes, or upon written notification otherwise served on the owner or operator of the vessel. Owners and operators must comply with the terms and conditions specified in such written notification. All NMFS–approved observers will report any violations of this section, or other applicable regulations and laws; such information may be used for enforcement purposes.

(C) *Additional sea turtle conservation measures.* The Assistant Administrator may impose other such restrictions upon summer flounder trawlers as he or she deems necessary or appropriate to protect sea turtles and ensure compliance, pursuant to the procedures of paragraph (e)(6) of this section. Such measures may include, but are not limited to, a requirement to use TEDs in areas other than summer flounder fishery–sea turtle protection area, a requirement to use limited tow–times, and closure of the fishery.

BILLING CODE 1505–01–D

Proposed Rules

Federal Register
Vol. 61, No. 51
Thursday, March 14, 1996

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–93–AD]

Airworthiness Directives; Aerospace Technologies of Australia Nomad Models N22B, N22S, and N24A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Aerospace Technologies of Australia (ASTA) Nomad Models N22B, N22S, and N24A airplanes. The proposed action would require inspecting the flap and aileron control rod fork ends for water accumulation and corrosion inside the internally drilled holes, and replacing the control rod fork ends if there is visible corrosion or sealing the hole if no corrosion is found. Reports of water entering the internal holes of the flap and aileron control rod fork ends and causing corrosion prompted the proposed AD action. The actions specified by the proposed AD are intended to prevent corrosion and water accumulation in the flap and aileron control rod fork ends, which, if not detected and corrected, could cause loss of control of the flaps and aileron and possible loss of control of the airplane.

DATES: Comments must be received on or before May 24, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–93–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Aerospace Technologies of Australia, Limited, ASTA DEFENCE, Private Bag No. 4, Beach Road Lara 3212, Victoria, Australia. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Atmur, Aerospace Engineer, Aircraft Certification Office, FAA, 3960 Paramount Blvd., Lakewood, California, 90712; telephone (310) 627–5224; facsimile (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 should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes 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 No. 95–CE–93–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, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–93–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Civil Airworthiness Authority (CAA), which is the airworthiness authority for Australia, notified the FAA in 1982 that an unsafe condition may exist on ASTA Nomad Models N22B, N22S, and N24A airplanes. At that time, the FAA determined that an AD action was not necessary. In July, 1995, the FAA has re-examined the proposed action and determined that it is now necessary to propose an airworthiness directive on these ASTA Nomad airplanes. The Australian CAA has reported incidents of corrosion from water accumulation in the flap and aileron control rod fork ends, part number (P/N) 1/N–45–351 and P/N 1/N–45–1059. Further investigation revealed that the internally drilled holes in the control rods are what allowed the water to accumulate inside the rods. This condition could lead to corrosion and a loss of static strength capability.

Nomad Service Bulletin (Nomad SB) NMD–27–24, dated October 8, 1982, specifies inspecting for corrosion and water accumulation inside the flap and aileron control rods' internally drilled holes. If corrosion is present, the Nomad service bulletin specifies replacing the part and sealing the drilled holes. If no corrosion is present, seal the drilled holes to prevent future corrosion.

The Australian CAA classified this service bulletin as mandatory and issued AD/GAF–N22/48, dated September, 1984 in order to assure the continued airworthiness of these airplanes in Australia.

These airplane models are manufactured in Australia 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 between Australia and the United States. Pursuant to this bilateral airworthiness agreement, the Australian CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the Australian CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop in other ASTA Nomad Models N22B, N22S, and N24A airplanes of the

same type design, the proposed AD would require inspecting for water accumulation and corrosion inside the internally drilled holes of the flap and aileron control rod fork ends and replacing any corroded control rod or sealing any internally drilled holes that are without corrosion.

The compliance time of the proposed AD is presented in calendar time instead of hours time-in- service (TIS). The FAA has determined that a calendar time compliance is the most desirable method because the unsafe condition described by the proposed AD is caused by corrosion. Corrosion initiates as a result of airplane operation, but can continue to develop regardless of whether the airplane is in service or in storage. Therefore, to ensure that the above-referenced condition is detected and corrected on all airplanes within a reasonable period of time without inadvertently grounding any airplanes, a compliance schedule based upon calendar time instead of hours TIS is proposed.

The FAA estimates that 15 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 3 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. In estimating the total cost impact of the proposed AD on U.S. operators, the FAA is only using the inspection criteria (3 workhours). The FAA has no way of knowing how many airplanes have incorporated the modification. With this in mind and based on those figures above, the total cost impact of the proposed AD upon U.S. operators of the affected airplanes is estimated to be $2,700. This figure only includes the cost for the initial inspection and does not include replacement costs of the corroded part. The FAA has no way of determining how many control rods may be corroded.

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 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) 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 has been placed 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 a new airworthiness directive (AD) to read as follows:

Aerospace Technologies of Australia (ASTA): Docket No. 95–CE–93–AD.

Applicability: Nomad Models N22B, N22S, and N24A airplanes with the following serial numbers, certificated in any category.

Nomad N22B and N22S

N22B–5M, N22B–6M, N22B–7, N22B–11M, N22B –12M, N22B–15M, N22B–16M, N22B–18M, N22B–19M, N22B–20M, N22B–21M, N22B–22M, N22B–23M, N22B–25, N22B–27, N22B–31M, N22B–33, N22B–35, N22B–37, N22B–50, N22B–53, N22B–56, N22B–57, N22B–58, N22B–59, N22B–61, N22B–65M, N22B–66, N22B–67M, N22B–68, N22B–69, N22B–70, N22S–82, N22B–83, N22S–84, N22B–85M, N22S–86, N22S–87, N22B–88M, N22S–90, N22B–91M, N22S–92, N22B–93, N22B–95, N22B–97M, N22B–100M, N22B–102, N22B–103, and N22B–104

Nomad N24A

N24A–44, N24A–46, N24A–62, N24A–64, N24A–71, N24A–72, N24A–73, N24A–74, N24A–75, N24A–76, N24A–77, N24A–78, and N24A–79

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 (e) 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 1 year after the effective date of this AD, unless already accomplished.

To prevent corrosion and water accumulation in the flap and aileron control rod fork ends, which, if not detected and corrected, could cause loss of control of the flaps and aileron and possible loss of control of the airplane, accomplish the following:

(a) Inspect for corrosion and water accumulation inside the internally drilled holes of the flap and aileron control rod fork ends in accordance with the *ACCOMPLISHMENT INSTRUCTIONS* section of Aerospace Technologies of Australia (ASTA) Nomad Service Bulletin (SB) NMD–27–24, dated October 8, 1982.

(b) If corrosion is present, prior to further flight, replace the control rod fork ends, part number (P/N) 1/N–45–351 or P/N 1/N–45–1059 and seal the drilled holes in accordance with the *ACCOMPLISHMENT INSTRUCTIONS* section of ASTA Nomad Service Bulletin (SB) NMD–27–24, dated October 8, 1982.

(c) If no corrosion is present, prior to further flight, seal the drilled holes to prevent future corrosion in accordance with *ACCOMPLISHMENT INSTRUCTIONS* section of ASTA Nomad Service Bulletin (SB) NMD–27–24, dated October 8 1982.

(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) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Blvd., Lakewood, California, 90712. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(f) All persons affected by this directive may obtain copies of the document referred to herein upon request to Aerospace Technologies of Australia, Limited, ASTA DEFENCE, Private Bag No. 4, Beach Road Lara 3212, Victoria, Australia; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on March 7, 1996.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–6126 Filed 3–13–96; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 95N–0245]

Food Labeling; Statement of Identity, Nutrition Labeling and Ingredient Labeling of Dietary Supplements; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a proposed rule that appeared in the Federal Register of December 28, 1995 (60 FR 67194). The document proposed to amend the food labeling regulations to require that dietary supplements be identified with the statement of identity ''Dietary Supplement'' and modify the nutrition labeling and ingredient labeling requirements for these foods. The document was published with some inadvertent typographical and editorial errors. This document corrects those errors.

DATES: Written comments by March 13, 1996. The agency is proposing that any final rule that may issue based upon this proposal become effective on January 1, 1997.

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: Susan Thompson, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5587.

In FR Doc. 95–31196, appearing on page 67194 in the Federal Register of Thursday, December 28, 1995, the following corrections are made:

§ 101.36 [Corrected]

1. On page 67218, in paragraphs (e)(10)(i) and (e)(10)(ii), the sample labels are corrected to read as follows:

BILLING CODE 6028–F

(i) Multiple vitamins:

Supplement Facts

Serving Size 1 Tablet

	Amount Per Serving	% Daily Value
Vitamin A (as retinyl acetate and 50% as beta-carotene)	5000 IU	100%
Vitamin C (as ascorbic acid)	60 mg	100%
Vitamin D	400 IU	100%
Vitamin E (as dl-alpha tocopheryl acetate)	30 IU	100%
Thiamin (as thiamin mononitrate)	1.5 mg	100%
Riboflavin	1.7 mg	100%
Niacin (as niacinamide)	20 mg	100%
Vitamin B_6 (as pyridoxine hydrochloride)	2.0 mg	100%
Folate (as folic acid)	400 mcg	100%
Vitamin B_{12} (as cyanocobalamin)	6 mcg	100%
Biotin	30 mcg	10%
Pantothenic Acid (as calcium pantothenate)	10 mg	100%

Other ingredients: Gelatin, lactose, magnesium stearate, microcrystalline cellulose, FD&C Yellow No. 6, propylene glycol, propylparaben, and sodium benzoate.

(ii) Multiple vitamins for children and adults:

Supplement Facts

Serving Size 1 Tablet

Amount Per Serving		% Daily Value for Children Under 4 Years of Age	% Daily Value for Adults and Children 4 or more Years of Age
Calories	5		
Total Carbohydrate	1 g	†	< 1%*
Sugars	1 g	†	†
Vitamin A (50% as beta-carotene)	2500 IU	100%	50%
Vitamin C	40 mg	100%	67%
Vitamin D	400 IU	100%	100%
Vitamin E	15 IU	150%	50%
Thiamin	1.1 mg	157%	73%
Riboflavin	1.2 mg	150%	71%
Niacin	14 mg	156%	70%
Vitamin B_6	1.1 mg	157%	55%
Folate	300 mcg	150%	75%
Vitamin B_{12}	5 mcg	167%	83%

* Percent Daily Values are based on a 2,000 calorie diet.
† Daily Value not established.

Other ingredients: Sucrose, sodium ascorbate, stearic acid, gelatin, maltodextrins, artificial flavors, vitamin E acetate, niacinamide, magnesium stearate, Yellow 6, artificial colors, stearic acid, palmitic acid, pyridoxine hydrochloride, thiamin mononitrate, vitamin A acetate, beta-carotene, and folic acid.

3. On page 67220, in paragraphs (e)(10)(iv) and (e)(10)(v), the sample labels are corrected to read as follows:

(iv) Dietary supplement containing dietary ingredient with and without RDI's and DRV's:

Supplement Facts

Serving Size 1 Capsule

	Amount Per Capsule	% Daily Value
Calories	20	
Calories from Fat	20	
Total Fat	2 g	3%*
Saturated Fat	0.5 g	3%*
Polyunsaturated Fat	1 g	†
Monounsaturated Fat	0.5 g	†
Vitamin A	4250 IU	85%
Vitamin D	425 IU	106%
Omega-3 fatty acids	0.5 g	†

* Percent Daily Values are based on a 2,000 calorie diet.
† Daily Value not established.

Ingredients: Cod fish oil, gelatin, water, and glycerin.

(v) A proprietary blend of dietary ingredients:

Supplement Facts

Serving Size 1 tsp (2.7 g) (makes 8 fl oz prepared)
Servings Per Container 24

	Amount Per Teaspoon	% Daily Value
Calories	10	
Total Carbohydrate	2 g	< 1%*
Sugars	2 g	†
Proprietary blend	0.7 g	†
Chamomile, Hungarian (*Matricaria chamomilla* L.)(flower)		
Hyssop (*Hyssopus officinalis* L.)(leaves)		

* Percent Daily Values are based on a 2,000 calorie diet.
† Daily Value not established.

Other Ingredients: Fructose, lactose, starch, and stearic acid.

5. On page 67223, in paragraph (e)(11), the sample label is corrected as shown below. The Reference Daily Intakes (RDI's) values in this sample label inadvertently reflected the RDI's for these nutrients that were contained in the proposed rule entitled ''Food Labeling: Reference Daily Intakes'' that published in the Federal Register of January 4, 1994 (59 FR 427). They are being corrected to reflect the RDI's for these nutrients as revised by the final rule of December 28, 1995 (60 FR 67164) entitled ''Food Labeling: Reference Daily Intakes.''

Supplement Facts

Serving Size 1 Packet

Amount Per Packet		% Daily Value
Vitamin A (from fish liver oil)	5,000 IU	100%
Vitamin C (as ascorbic acid and from rose hips, *Rosa* L. spp.)(fruit)	250 mg	417%
Vitamin D	400 IU	100%
Vitamin E (as d-alpha tocopherol)	150 IU	500%
Thiamin (as thiamin mononitrate)	75 mg	5000%
Riboflavin	75 mg	4412%
Niacin (as niacinamide)	75 mg	375%
Vitamin B_6 (as pyridoxine hydrochloride)	75 mg	3750%
Folate (as folic acid)	400 mcg	100%
Vitamin B_{12} (as cyanocobalamin)	100 mcg	1667%
Biotin	100 mcg	33%
Pantothenic Acid	75 mg	750%
Calcium (from oystershell)	100 mg	10%
Iron (as ferrous fumarate)	10 mg	56%
Iodine (from kelp)	150 mcg	100%
Magnesium (as magnesium oxide)	60 mg	15%

Amount Per Packet		% Daily Value
Zinc (as zinc oxide)	15 mg	100%
Selenium (as sodium selenate)	25 mcg	36%
Copper (as cupric oxide)	1 mg	50%
Manganese (as manganese sulfate)	5 mg	250%
Chromium (as chromium chloride)	50 mcg	42%
Molybdenum (as sodium molybdate)	50 mcg	67%
Potassium (as potassium chloride)	10 mg	< 1%
Choline (as choline chloride)	100 mg	*
Betaine (as betaine hydrochloride)	25 mg	*
Glutamic Acid (as L-glutamic acid)	25 mg	*
Inositol (as inositol monophosphate)	75 mg	*
Rutin (from common buckwheat, *Polygonum fagopyrum* L.)(leaves)	25 mg	*
para-Aminobenzoic acid	30 mg	*
Deoxyribonucleic acid	50 mg	*
Boron	500 mcg	*

* Daily Value not established

Other ingredients: Cellulose, stearic acid and silica.

Dated: March 7, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–6028 Filed 3–13–96; 8:45 am]

BILLING CODE 4160–01–C

21 CFR Parts 809 and 864

[Docket No. 96N–0082]

Medical Devices; Classification/ Reclassification; Restricted Devices; Analyte Specific Reagents

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to classify/reclassify analyte specific reagents (ASR) presenting a low risk to the public health into class I (general controls), and to exempt these class I analyte specific reagents from the premarket notification (510(k)) requirements. FDA is also proposing to designate class I analyte specific reagents as restricted devices under the Federal Food, Drug, and Cosmetic Act (the act), and to establish restrictions on their sale, distribution and labeling. Finally, FDA is proposing that ASR's presenting a high risk be classified into or retained in class III (premarket approval). The scope of products covered by this proposal includes both pre-1976 devices which have not been previously classified, as well as post-1976 devices which are statutorily classified into class III. The intention of this proposal is to regulate these pre- and post-1976 devices in a consistent fashion. Therefore, FDA is proposing classification or reclassification of these products, as applicable.

DATES: Written comments on the proposed rule by June 12, 1996.

Written comments on the information collection requirements should be submitted by April 15, 1996.

ADDRESSES: Written comments on the proposed rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Steven Gutman, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–3084.

SUPPLEMENTARY INFORMATION: The act (21 U.S.C. 201 *et seq.*) as amended by the Medical Device Amendments of 1976 (Pub. L. 94–295) (the amendments) and the Safe Medical Devices Act of 1990 (Pub. L. 101–629)(SMDA) established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the degree of regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are as follows: Class I, general controls; class II, special controls; class III, premarket approval.

Devices that were in commercial distribution before May 28, 1976 (the date of enactment of the amendments) are classified under 21 U.S.C. 360c after FDA has: (1) Received a recommendation from a classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. A device that is first offered in commercial distribution after May 28, 1976, and is substantially equivalent to a device classified under this scheme, is also classified into the same class as the device to which it is substantially equivalent.

A device that was not in commercial distribution prior to May 28, 1976, and that is not substantially equivalent to a preamendments device, is classified by statute into class III without any FDA rulemaking proceedings. The agency determines whether new devices are substantially equivalent to previously offered devices by means of the premarket notification procedure in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 of the regulations (21 CFR part 807).

I. Background

There has been a growing trend in recent years for more sophisticated clinical laboratories to develop and prepare their own tests that are intended to diagnose various medical conditions, using ingredients that they frequently purchase from biological or chemical suppliers. The ingredients and other materials used in developing these tests may be divided into two groups. The first group is referred to as general purpose reagents, which include the laboratory apparatus, collection systems, and chemicals used broadly in a wide variety of tests. The second group is composed of chemicals or antibodies that may be thought of as the ''active ingredients'' of a test and which are useful only in testing for one specific disease or condition. It is this group of active ingredients that FDA is proposing to identify as ASR's. These in-house developed tests (sometimes referred to as ''home brew'' tests) include a wide variety used in the diagnosis of infectious diseases, cancer, genetic, and various other conditions. FDA currently regulates the safety and effectiveness of diagnostic tests that are traditionally manufactured and commercially marketed as finished products. However, in-house developed tests have not been actively regulated by the Agency and the ingredients used in them generally are not produced under FDA assured manufacturing quality control. Other general controls also have not been applied routinely to these products. FDA is not proposing a comprehensive regulatory scheme over the final tests produced by these laboratories and is focusing instead on the ''active ingredients'' (ASR's) provided to the laboratories. However, at a future date, the agency may reevaluate whether additional controls over the in-house tests developed by such laboratories may be needed to provide an appropriate level of consumer protection. Such controls may be especially relevant as testing for the presence of genes associated with cancer or dementing diseases becomes more widely available. Additional controls might include a broad array of approaches, ranging from full premarket review by FDA to use of third parties to evaluate analytical or clinical performance of the tests. The laboratories producing tests from ASR's and offering the tests as laboratory services are currently regulated by the Health Care Financing Administration (HCFA) under the Clinical Laboratory Improvement Amendments of 1988 (CLIA–88) for compliance with general laboratory standards regarding personnel, proficiency testing, quality control, and quality assurance. However, these HCFA regulations do not include the same product controls provided by FDA. As a result, neither patients nor practitioners have assurance that all ingredients in the laboratory developed tests are of high quality and capable of producing consistent results.

FDA is concerned that the present situation with respect to in-house developed tests, in which these ingredients are essentially unregulated and therefore of unpredictable quality, may create a risk to the public health. FDA also is concerned that continuing uncertainties about the regulatory status of commercially marketed ASR's may create an unpredictable business climate for manufacturers and suppliers. On the other hand, the agency recognizes the clinical importance of in-house developed testing as a mechanism for

providing novel, highly specialized tests in a relatively short time, sometimes for diseases that affect a relatively small proportion of the population.

FDA's primary goals in this rulemaking proceeding are to assure that ASR's are high quality reagents and that performance claims are restricted to those made by the final test developer. In addition, for those select ASR's whose use present a particularly high risk to public health, FDA seeks to ensure a higher and more appropriate level of regulatory review.

To seek public and expert input on these issues, FDA held a meeting of its Immunology Devices Panel (the Panel) on January 22, 1996. In the notice announcing that meeting (61 FR 74–75, January 2, 1996), FDA set forth its preliminary thinking regarding a regulatory framework for ASR's. That framework included placing the majority of ASR's into class I and exempting them from premarket notification requirements; maintaining other general controls, including registration, listing, and compliance with current good manufacturing practice (CGMP) and medical device reporting (MDR) requirements; and restrictions on the sale, distribution or use of these devices. Also, under that framework, a small number of ASR's presenting a high risk to public health would be placed in class III.

At the public session of the Panel meeting, a variety of health professional and industry organizations presented their views. These groups included: American Association for Clinical Chemistry, American Clinical Laboratories Association, Association for Molecular Pathology, College of American Pathologists, Centocor, Inc., Health Industry Manufacturers Association, IBT Reference Laboratory, Joint Council of Immunohistochemical Manufacturers, and Specialty Laboratories Inc. In general, these groups supported the broad outline of the FDA approach (Ref. 1).

II. The Immunology Devices Panel Recommendation

At the January 22, 1996 meeting, the Panel made the following recommendations regarding the classification of analyte specific reagents.

1. *Identification*: The Panel recommended that these devices be identified as follows: ''Analyte specific reagents are antibodies (both monoclonal and polyclonal), specific receptor proteins, nonhuman nucleic acids and fragments of nonhuman nucleic acids and similar biological reagents which, through specific chemical binding or reaction, are intended for diagnostic identification or quantification of specific analytes in a biological specimen.'' (Ref. 1.)

2. *Recommended classifications*: The Panel recommended that most of these devices be classified into Class I (general controls); that these devices be exempted from the premarket notification (510(k)) requirements; and that these devices be subject to the good manufacturing practices regulation as well as to other general controls, including restrictions on their distribution and labeling. The panel also recommended that certain ASR's should be classified into class II or class III, or as regulated by the Center for Biologics Evaluation and Research, because their use presents particularly high risks.

3. *Summary of reasons for recommendation*: The Panel recommended that most analyte specific reagents be classified into class I because they believed that general controls are sufficient to provide reasonable assurance of their safety and effectiveness.The Panel did not believe that premarket review was an appropriate or necessary mechanism for assuring the safe and effective use of these reagents.

The Panel's classification recommendation was based on the applicability of the general controls usually associated with class I products (e.g., registration, listing, CGMP, and MDR) as well as the inclusion of restrictions on distribution, use, and labeling. The Panel believed that compliance with CGMP's by ASR suppliers was essential to ensure the quality and purity of ASR's purchased by clinical laboratories. The Panel also believed that restricting distribution of these ASR's to laboratories certified as high complexity laboratories under CLIA would ensure that these devices would be properly used by qualified health professionals. The Panel also believed that it would be appropriate to require that high complexity laboratories, when reporting results from in-house developed tests using ASR's, include a disclaimer stating that the in-house developed tests had not been reviewed by FDA. The Panel believed that this disclaimer would provide clinicians with additional information to be used in deciding how much weight to place on the test results being reported. Finally, the Panel recommended that manufacturers of ASR's be prohibited from labeling their product with analytical or clinical performance claims. The Panel believed that it would be inappropriate for manufacturers to make specific claims because these products are intended to be used as ingredients in a variety of ways by high complexity laboratories. Under these circumstances, performance would be established by the laboratory using the ASR's.

While the Panel believed that class I designation and exemption from 510(k) was appropriate for most analyte specific reagents, the Panel was of the opinion that there were some instances in which general controls would not be sufficient. They suggested that:

> those analyte specific reagents intended to diagnose communicable diseases or where the Agency has established a recommendation for use of the test in safeguarding the blood supply or establishing the safe use of blood and blood products and/or tests to predict genetic disease or predisposition to disease in healthy or apparently healthy individuals are more properly classified into Class II or III and subject to premarket controls, 510(k) or PMA as applicable to such classifications. (Ref. 1.)

The Panel believed that ASR's used in these settings present risks to the public health that require heightened regulatory control.

4. *Summary of data on which panel recommendation is based*: The Immunology Devices Panel based its recommendation on the Panel members personal knowledge of, and clinical experience with, the devices and presentations by Panel members and interested parties (Ref. 1).

5. *Risks to health*: The primary risk to health presented by these products is that they may be manufactured with variable quality, or be inappropriately labeled, or be used by persons without adequate qualifications. There is also concern that clinicians ordering the tests made from ASR's may be unaware that the clinical performance characteristics of these tests have not been independently reviewed by FDA. The Panel also identified a subset of ASR's whose use posed unique risks to public health because of the substantial clinical impact of the information generated using these devices.

The Panel discussed FDA's approach to regulating ASR's without regard to whether the particular ASR's are pre-1976 or post-1976 devices. FDA believes that the Panel's thinking and conclusions may be reasonably applied to the classification of pre-1976 ASR's as well as to the reclassification of post-1976 ASR's (which, by statute, are already in class III).

III. FDA's Proposed Rule

FDA is proposing that most active ingredients used in preparing in-house developed tests be classified as class I and regulated as follows:

1. The biological or chemical suppliers would have to register with

FDA and provide the agency with a list of the ASR's they are supplying to laboratories for use in developing tests. These suppliers would be required to follow good manufacturing practices, as applicable, in accordance with 21 CFR part 820. The suppliers would also have to report to FDA, under 21 CFR part 803, adverse events that may have been due to their ingredients.

2. These class I devices would be exempt from the premarket notification requirements of section 510(k) of the act. Most recently, in the Federal Register of July 21, 1994 (59 FR 37378), FDA set out its criteria for exempting devices from premarket notification. In part, this document states that a device may be exempted if the following factors apply:

(a) Characteristics of the device necessary for its safe and effective performance are well established; (b) anticipated changes in the device that could affect safety and effectiveness will either: (1) be readily detectable by users by visual examination or other means such as routine testing, before causing harm, e.g., testing of a clinical laboratory reagent with positive and negative controls; or (2) not materially increase the risk of injury, incorrect diagnosis, or ineffective treatment; and any changes in the device would not be likely to result in a change in the device's classification.

(59 FR 37378).

FDA believes that these criteria apply to class I analyte specific reagents and that, therefore, they may be exempted from premarket notification.

3. Section 520(e) of the act (21 U.S.C. 360j(e)) provides that FDA may by regulation require that a device be restricted in its sale, distribution, or use only upon the written or oral authorization of a practitioner licensed by law to administer or use such device, or upon such other conditions as FDA may prescribe in the regulation, if, because of its potentiality for harmful effect or the collateral measures necessary to its use, FDA determines that there cannot otherwise be reasonable assurance of its safety and effectiveness. FDA is proposing that use of these active ingredients to produce in-house developed tests be restricted to those clinical laboratories certified under CLIA–88 as ''high-complexity laboratories.'' These laboratories have the expertise and qualifications required to use these active ingredients in making in-house tests, and to assess the performance of the ASR's. FDA believes that these qualifications are necessary to provide reasonable assurance of the safe and effective use of these devices.

4. Under the proposal, the labeling for the active ingredients to be used in these in-house tests would be restricted to describing the identity and purity of the material being sold in addition to most of the standard information already required for general purpose reagents (e.g., net weight; storage instructions). However, under this proposal no specific analytical or clinical performance claims could be made in the labeling or in promotional material. This is because the laboratory producing the test, not the manufacturer of the ingredients, is accountable for use of the ingredient and its performance as part of a test. Also, under section 520(e) of the act, the advertising and promotional material for ASR's would be restricted in a manner consistent with the labeling. As discussed in section IV of this document, FDA invites comments on the Panel's recommendation regarding labeling in test reports from clinical laboratories to health professionals. Finally, FDA is proposing to revise the definition of general purpose reagents to complement and be consistent with the definition being proposed for ASR's.

In addition to the proposed classification of most ASR's in class I, FDA is proposing that certain active ingredients used in in-house developed tests be classified either in class III subject to premarket approval because of the serious health risks associated with their use or in the class of the test in which the ASR is being used, or regulated under other appropriate mechanisms. These include active ingredients used in tests intended to diagnose potentially fatal contagious conditions (e.g., human immunodeficiency virus (HIV) or tuberculosis) or intended to safeguard the blood supply. The proposed restrictions on the distribution, use, and labeling of ASR's in class I would also apply to any ASR placed in class II or class III. As described in section IV of this document, the agency is seeking public input on the Panel's recommendation that this group of reserved ASR's should also include those active ingredients which are intended for use in human genetic testing.

If this proposal is made final, marketing of post-1976 ASR's in class III would need to cease following publication of the final rule until premarket approval applications (PMA's) were submitted and approved. The number of firms and products that would be affected would be a function of how many ASR's are classified in class III in the final rule. FDA believes that, as proposed, only a very few companies and products would be affected. For pre-1976 devices, following publication of a final rule on classification, companies would be required to submit 510(k)'s as an interim measure. Companies would then have a minimum of 30 months to develop safety and effectiveness data necessary to support a PMA.

IV. Unresolved Questions; Request for Comments

A number of important issues were raised during the Panel discussion as specified below. FDA is inviting comments on all of these issues.

1. The Panel expressed concern that the controls recommended by FDA for analyte specific reagents used in in-house developed tests were not sufficiently stringent for the active ingredients used in human genetic testing, and suggested that these ingredients be regulated as class II or class III devices. FDA believes that this recommendation by the panel may be too broad. For example, FDA is not certain that making a distinction among tests that directly identify genetic material (i.e., deoxyribonucleic acid (DNA), which the panel recommended for class II or III) as opposed to transcribed genetic material (i.e., m-RNA) or gene products (i.e.,proteins and post-translationally modified proteins, which the panel recommended for class I) provides a meaningful basis for differing regulatory treatment of ASR's that are used to develop these tests. FDA is therefore soliciting comments on the full range of options available to regulate ASR's intended for use in human genetic testing: From regulating these ASR's as class I exempt products to regulating them as class III devices subject to premarket approval. Intermediate options include regulating a subset of these ASR's as class III devices. For example, FDA could regulate as class III devices only those ASR's used in tests intended for use in overtly healthy people to identify a genetic predisposition to a dementing disease, or to fatal or potentially fatal medical disorders (e.g., cancers or Alzheimer's disease), in situations where penetrance is poorly defined or variable and latency is long (5 years or longer). FDA is soliciting comments on the degree of regulatory control needed for these tests and reasonable bases for distinction , if any, among the ASR's used for human genetic testing.

2. The panel recommended that the definition of ASR's not include human nucleic acids. (See ''Panel Recommendation'' above.) FDA believes that this would be too narrow and has excluded the word ''nonhuman'' from its proposed definition. FDA believes that if ASR's for human genetic sequencing are to be excluded in a final rule from class I exempt status, it would

be preferable to do so by describing the basis for such exclusion in the rule and explicitly reserving those ASR's for class II or III, as has been proposed for ASR's used in tests intended to safeguard the blood supply. FDA also believes that the use of the phrase ''specific analytes'' in the Panel's recommended definition of ASR's is circular and has replaced it in the definition with: ''and quantification of an individual chemical substance or ligand in biological substances.'' FDA invites comments on these changes.

3. FDA is also soliciting comments on the suitability of the term ''analyte-specific reagent'' to describe the active ingredients in in-house developed tests.

4. The Panel recommended that a disclaimer be appended to the test report informing the ordering practitioner of the test results. The disclaimer would inform the practitioner that the test was developed, and its performance characteristics defined, by the laboratory without FDA review. The agency is seeking comment on whether such a disclaimer should be required and, if so, how it should be worded. One possible statement would be: ''This test was developed and its performance characteristics determined by [Laboratory Name]. It has not been reviewed by the U.S. Food and Drug Administration.'' In addition, FDA solicits comments on whether the tests developed by the laboratories using ASR's should be made available only on the order of a physician, or, alternatively, whether ASR's intended for use in tests made directly available to consumers should be regulated in class II or III.

V. Comments

Interested persons may, on or before June 12, 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.

VI. Reference

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Transcript of the Immunology Devices Panel of the Medical Devices Advisory Committee meeting, January 22, 1996.

VII. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this proposed rule would not require premarket review of the vast majority of products, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

IX. Paperwork Reduction Act of 1995

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate and other forms of information technology.

Title: Labeling Requirements for Analyte Specific Reagents-Labeling for Laboratories

Description: The proposed rule would amend the labeling requirements for certain in vitro diagnostic products to require that manufacturers of analyte specific reagents provide certain information concerning the reagents to laboratories that will develop tests using the reagents. The proposed regulation would also require that advertising and promotional material for analyte specific reagents include information about the identity and purity of the reagent and not make any claims about analytic or clinical performance. The purpose of the regulation is to assure that laboratories developing tests using these reagents have sufficient information about their identity and purity.

Description of Respondents: Businesses and other for profit organizations.

Estimated Annual Reporting Burden

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours Per Response	Total Hours
809.10(e)	100	1	100	40	4,000
809.30(d)	100	1	100	20	2,000
Total					6,000

There are no capital costs or operating and maintenance costs associated with these information collections.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, FDA has submitted the collections of information contained in the proposed rule to OMB for review. Other organizations and individuals desiring to submit comments regarding the burden estimate or any aspect of these information collection requirements, including suggestions for reducing the burden, should direct them to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA. Written comments on the information collection requirements should be submitted by April 15, 1996.

List of Subjects

21 CFR Part 809

Labeling, Medical devices.

21 CFR Part 864

Blood, Medical devices, Packaging and containers.

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 parts 809 and 864 be amended as follows:

PART 809—IN VITRO DIAGNOSTIC PRODUCTS FOR HUMAN USE

1. The authority citation for 21 CFR part 809 continues to read as follows:

Authority: Secs. 301, 501, 502, 505, 507, 512, 513, 514, 518, 519, 520, 701, 702, 704, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 352, 352, 355, 357, 360b, 360c, 360d, 360h, 360i, 360j, 371, 372, 374, 381).

2. Section 809.10 is amended in paragraph (a) by adding at the end of the first sentence ''or as provided in paragraph (e) of this section'' and by adding new paragraph (e) to read as follows:

§ 809.10 Labeling for in vitro diagnostic products.

* * * * *

(e) The labeling for analyte specific reagents (e.g., monoclonal antibodies, deoxyribonucleic acid (DNA) probes, viral antigens) shall bear the following information:

(1) The proprietary name and established name (common or usual name), if any, of the reagent.

(2) A declaration of the established name (common or usual name), if any, and quantity, proportion or concentration of the reagent ingredient; and for a reagent derived from biological material, the source and, where applicable, a measure of its activity. The quantity, proportion, concentration or activity shall be stated in the system generally used and recognized by the intended user, e.g., metric, international units, etc.

(3) A statement of the purity and quality of the reagent, including a quantitative declaration of any impurities present. The requirement for this information may be met by a statement of conformity with a generally recognized and generally available standard which contains the same information, e.g., those established by the American Chemical Society, U.S. Pharmacopeia, National Formulary, National Research Council.

(4) A statement of warnings or precautions for users as established in the regulations contained in 16 CFR part 1500 and any other warnings appropriate to the hazard presented by the product.

(5) Appropriate storage instructions adequate to protect the stability of the product. When applicable, these instructions shall include such information as conditions of temperature, light, humidity, and other pertinent factors. The basis for such instructions shall be determined by reliable, meaningful, and specific test methods such as those described in § 211.166 of this chapter.

(6) A declaration of the net quantity of contents, expressed in terms of weight or volume, numerical count, or any combination of these or other terms which accurately reflect the contents of the package. The use of metric designations is encouraged, wherever appropriate.

(7) Name and place of business of manufacturer, packer, or distributor.

(8) A lot or control number, identified as such, from which it is possible to determine the complete manufacturing history of the product.

(9) The statement ''Analytical and performance characteristics are not established.''

(10) In the case of immediate containers too small or otherwise unable to accommodate a label with sufficient space to bear all such information, and which are packaged within an outer container from which they are removed for use, the information required by paragraphs (e)(1) through (e)(6) of this section may appear in the outer container labeling only.

3. New § 809.30 is added to subpart C read as follows:

§ 809.30 Restrictions on the sale, distribution and use of analyte specific reagents.

(a) Analyte specific reagents (§ 864.4020 of this chapter) are restricted devices under section 520(e) of the act subject to the restrictions set forth in this section.

(b) Analyte specific reagents may only be sold to:

(1) In vitro diagnostic manufacturers;

(2) Clinical laboratories certified as high complexity laboratories under 42 CFR part 493; or

(3) Organizations that use the reagents to make tests for purposes other than providing diagnostic information to patients and practitioners, e.g., forensic or underwriting laboratories.

(c) Analyte specific reagents must be labeled in accordance with § 809.10(e).

(d) Advertising and promotional materials for analyte specific reagents:

(1) Shall include the identity and purity of the analyte specific reagent and the identity of the analyte;

(2) Shall include the statement ''Analytical and performance characteristics are not established''; and

(3) Shall not make any statement regarding analytical or clinical performance.

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

4. The authority citation for 21 CFR part 864 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

5. Section 864.4010 is amended by revising paragraph (a) to read as follows.

§ 864.4010 General purpose reagent.

(a) A general purpose reagent is a chemical reagent that has general laboratory application, that is used to collect, prepare, and examine specimens from the human body for diagnostic histopathology, cytology, and hematology, and that is not labeled or otherwise intended for a specific diagnostic application. It may be either an individual substance, or multiple substances reformulated, which, when combined with or used in conjunction with an appropriate analyte specific reagent and other general purpose reagents, is part of a diagnostic test procedure or system constituting a finished in vitro diagnostic (IVD) test. General purpose reagents are appropriate for combining with more than one analyte specific reagent in producing such systems and include labware or disposable constituents of tests but do not include laboratory

machinery, automated or powered systems. General purpose reagents include cytological preservatives, decalcifying reagents, fixatives and adhesives, tissue processing reagents, isotonic solutions and pH buffers. Reagents used in tests for more than one individual chemical substance or ligand are general purpose reagents (e.g., TAQ polymerase, substrates for enzyme immunoassay (EIA)).

* * * * *

6. New § 864.4020 is added to subpart E to read as follows:

§ 864.4020 Analyte specific reagents.

(a) *Identification*. Analyte specific reagents are antibodies, both polyclonal and monoclonal, specific receptor proteins, nucleic acid sequences, and similar biological reagents which, through chemical binding or reaction with substances in a specimen, are intended for identification and quantification of an individual chemical substance or ligand in biological specimens.

(b) *Classification*.

(1) Class I (General Controls), except as described in paragraph (b)(2) of this section. These devices are exempt from the premarket notification requirements in part 807, subpart E of this chapter.

(2) These devices are in Class III (Premarket Approval), when:

(i) The analyte is used to develop a test intended to diagnose a contagious condition and the condition is highly likely to result in a fatal outcome and prompt accurate diagnosis offers the opportunity to mitigate the public health impact of the condition (e.g., human immunodeficiency virus (HIV) or tuberculosis); or

(ii) The analyte is used to develop a test intended to diagnose a condition for which FDA has established a recommendation or requirement for the use of the test in safeguarding the blood supply or establishing the safe use of blood and blood products (e.g., hepatitis, syphilis, or blood grouping antisera).

(3) ASR's that meet the criteria in paragraph (b)(2) of this section but are used to develop tests that have been classified by FDA into class I or class II are classified into the same class as the test for which they are being used.

(c) Date PMA or notice of completion of a PDP is required:

(1) Preamendments ASR's; No effective date has been established for the requirement for premarket approval for the device described in paragraph (b)(2) of this section. See § 864.3.

(2) For postamendments ASR's; (effective date of the final rule).

Dated: March 8, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 96–6160 Filed 3–11–96; 4:01 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE–35–95]

RIN 1545–AT82

Allocation of Accrued Benefits Between Employer and Employee Contributions; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the notice of proposed rulemaking (EE–35–95) which was published in the Federal Register on Friday, December 22, 1995 (60 FR 66532), relating to proposed regulations that provide guidance on calculation of an employee's accrued benefit derived from the employee's contributions to a qualified defined pension plan.

FOR FURTHER INFORMATION CONTACT: Janet A. Laufer, (202) 622–4606, (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of this correction proposes amendments that reflect changes made to section 411(c)(2) by the Omnibus Budget Reconciliation Act of 1987 and the Omnibus Budget Reconciliation Act of 1989.

Need for Correction

As published, the notice of proposed rulemaking (EE–35–95) contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (EE–35–95), which was the subject of FR Doc. 95–31006, is corrected as follows:

§ 1.411(c)–1 [Corrected]

1. On page 66535, column 1, § 1.411(c)–1 (c)(6)(ii), paragraphs (1) through (8) of *Example 1.*, are correctly designated as paragraphs (A) through (H) of *Example 1*.

2. On page 66535, column 1, § 1.411(c)–1 (c)(6)(ii), newly designated paragraph (D) of *Example 1.*, line 4, the language ''determined in paragraph (3) of this *Example*'' is corrected to read ''determined in paragraph (C) of this *Example*''.

3. On page 66535, column 1, § 1.411(c)–1 (c)(6)(ii), newly designated paragraph (D) of *Example 1.*, the last line, the language ''$11,913 − 9.196 = $1,295.'' is corrected to read ''$11,913 ÷ 9.196 = $1,295.''.

4. On page 66535, column 1, § 1.411(c)–1 (c)(6)(ii), newly designated paragraph (H) of *Example 1.*, second and third lines from the bottom of the column, the language ''contributions, the sum of paragraphs (4) and (7) of this *Example 1*. ($1,295 + $1,654 ='' is corrected to read ''contributions, the sum of paragraphs (D) and (G) of this *Example 1*. ($1,295 + $1,654 =''.

5. On page 66535, column 2, § 1.411(c)–1 (c)(6)(ii), paragraphs (1) through (5) of *Example 2.* are correctly designated as paragraphs (A) through (E) of *Example 2*.

6. On page 66535, column 2, § 1.411(c)–1 (c)(6)(ii), newly designated paragraph (B) of *Example 2.*, last line, the language ''($6,480 from paragraph 2 of *Example 1*).'' is corrected to read ''($6,480 from paragraph (B) of *Example 1*).''.

7. On page 66535, column 2, § 1.411(c)–1 (c)(6)(ii), newly designated paragraph (C) of *Example 2.*, last line, the language ''from paragraph 3 of *Example 1*).'' is corrected to read ''from paragraph (C) of *Example 1*).''.

8. On page 66535, column 2, § 1.411(c)–1 (c)(6)(ii), newly designated paragraph (D) of *Example 2.*, line 4, the language ''determined in paragraph (3) of this *Example*'' is corrected to read ''determined in paragraph (C) of this *Example*''.

9. On page 66535, column 2, § 1.411(c)–1 (c)(6)(ii), newly designated paragraph (D) of *Example 2.*, last line, the language ''($1,295 from paragraph 4 of *Example 1*)'' is corrected to read ''($1,295 from paragraph (D) of *Example 1*)''.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 96–5675 Filed 3–13–96; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Part 48

[PS–6–95]

RIN 1545–AT18

Gasoline and Diesel Fuel Excise Tax; Dye Injection Systems and Markers; Measurement

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the gasoline and diesel fuel excise tax. The proposed regulations reflect and implement certain changes made by the Revenue Reconciliation Act of 1990 and the Omnibus Budget Reconciliation Act of 1993 (the 1993 Act). They affect certain enterers, refiners, terminal operators, and throughputters. This document also provides a notice of public hearing on these proposed regulations.

DATES: Written comments and outlines of oral comments to be presented at the public hearing scheduled for June 20, 1996, must be received by June 12, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (PS–6–95), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (PS–6–95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Frank Boland, (202) 622–3130; concerning submissions and the hearing, Christina Vasquez at (202) 622–7190; (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received by May 13, 1996.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information is in § 48.4082–1(c). This information is required by the IRS to monitor manual dyeing at terminals. This information will be used to ensure the collection of the proper amount of tax imposed by section 4081. The likely recordkeepers are business or other for-profit institutions and organizations. Responses to this collection of information are required to obtain exemption from the diesel fuel excise tax.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Estimated total annual recordkeeping burden: 200 hours.

Estimated average annual burden per recordkeeper: 1 hour.

Estimated number of recordkeepers: 200.

Background

Section 4081 imposes a tax on certain removals, entries, and sales of diesel fuel. However, under section 4082, the tax is not imposed if, among other conditions, the diesel fuel (1) is indelibly dyed in accordance with regulations that the Secretary shall prescribe, and (2) meets such marking requirements (if any) as may be prescribed by the Secretary in regulations.

The regulations currently provide that the section 4082 exemption applies only to diesel fuel that contains a prescribed type and amount of dye. However, the regulations do not prescribe the time or method for adding the dye to diesel fuel and do not require the use of a marker.

Dye Injection Systems

Dyeing Methods

Diesel fuel is usually dyed at a terminal rack by either manual dyeing or mechanical injection.

At a terminal using a typical manual dyeing technique, a measured amount of dye is manually placed into an empty tank compartment of a transport trailer while the trailer is at the terminal rack. Then, as diesel fuel is pumped into the compartment at the rack, the dye and the fuel are mixed together. Further mixing occurs through the motion of the trailer as it moves on the highway.

At a terminal using a typical mechanical injection system, a measured amount of dye is automatically injected into the diesel fuel as the fuel is delivered into a compartment of a transport trailer at the terminal rack.

Conerns About Manual Dyeing

The Federal government, State governments, and various segments of the petroleum industry have long been concerned with the problem of diesel fuel tax evasion, and to address this problem Congress changed the law to require that untaxed diesel fuel be indelibly dyed. The IRS is concerned, however, that tax can still be evaded through removals at a terminal of undyed fuel that has been designated as dyed.

Manual dyeing is inherently difficult to monitor. It occurs after diesel fuel has been withdrawn from a terminal storage tank, generally requires the work of several people, is imprecise, and does not automatically create a reliable record.

Mechanical dye injection, on the other hand, occurs while the fuel is still under the control of the terminal operator, is computer regulated, and can automatically create a reliable record of the amount of dye that was injected and fuel that was dyed. Thus, dye injection is the preferred method of combining diesel fuel and dye at a terminal.

Explanation of Provisions

Diesel fuel removed from a terminal at the rack may be dyed before the fuel is received at the terminal, while the fuel is in a bulk storage tank at the terminal, or at the terminal rack. Under the proposed regulations, as under existing law, diesel fuel must contain a prescribed type and amount of dye at the time of the removal, entry, or sale that would otherwise be subject to tax. For example, high-sulfur diesel fuel, which is required to be dyed at a refinery under Environmental Protection Agency regulations, must contain the prescribed type and amount of dye at the time of the removal at the terminal rack even if additional dye must be added at that point.

Under the proposed regulations, a terminal operator that dyes diesel fuel at a terminal generally must use a prescribed mechanical injection system or else give a bond to the district

director as a condition of retaining its registration. The prescribed system contains calibrated measurement devices, shut-off devices, and locks and similar equipment to secure these devices. If the system malfunctions at a particular terminal, the terminal operator may manually dye the fuel if the operator notifies the district director of the malfunction.

The proposed regulations also prescribe the records that the terminal operator must maintain with respect to any manual dyeing performed at its terminals.

Markers

A marker is a material that is placed in diesel fuel to designate the fuel as untaxed. Unlike dye, a marker does not reveal its presence until the fuel into which it is introduced is subjected to a special test. Markers are effective even if diluted and can be detected even if there is no visual evidence of dye.

The proposed regulations do not require the use of markers. However, the IRS expects to issue a notice of proposed rulemaking with respect to markers within the next year. In the meantime, the IRS is interested in receiving comments relating to the type and concentration of markers, the cost of markers, and whether lower concentrations of dye could be used in conjunction with a marker.

Measurement

Existing regulations provide that gallons of taxable fuel may be measured on the basis of actual volumetric gallons, gallons adjusted to 60 degrees Fahrenheit, or any other temperature adjustment method approved by the Commissioner.

These proposed regulations modify this rule by generally providing that measurement is to be made on the basis of actual volumetric gallons or gallons adjusted to 60 degrees Fahrenheit, whichever is the basis for measurement under the position holder's terminaling agreement with the terminal operator.

Special Analyses

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

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Thursday, June 20, 1996, at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments and an outline of topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by June 12, 1996.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

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

List of Subjects in 26 CFR Part 48

Excise taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 48 is proposed to be amended as follows:

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

Paragraph 1. The authority citation for part 48 continues to read, in part, as follows:

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

Par. 2. Section 48.4081–8 is revised to read as follows:

§ 48.4081–8 Taxable fuel; measurement.

(a) *Removals from a terminal.* For purposes of the tax imposed under §§ 48.4081–2 and 48.4081–3(d), taxable fuel is measured on the basis of actual volumetric gallons or gallons adjusted to 60 degrees Fahrenheit, whichever is the basis for measurement under the position holder's terminaling agreement with the terminal operator.

(b) *Other taxable events.* For purposes of the taxes imposed under §§ 48.4081–3(b), 48.4081–3(c), 48.4081–3(e), and 48.4082–4, and the tax imposed on the removal of taxable fuel under § 48.4081–3(g), taxable fuel is measured on the basis of actual volumetric gallons or gallons adjusted to 60 degrees Fahrenheit. For purposes of the tax imposed under § 48.4081–3(f) and the tax imposed on the sale of taxable fuel under § 48.4081–3(g), taxable fuel is measured on the basis of actual volumetric gallons or gallons adjusted to 60 degrees Fahrenheit, whichever basis is used to invoice the buyer.

(c) *Effective date.* This section is applicable as of October 1, 1996.

Par. 3. Section 48.4082–1 is amended as follows:

1. In the introductory text of paragraph (a), the language ''if—'' is removed and ''if, at the time of the removal, entry, or sale—'' is added in its place.

2. Paragraph (d) is revised.

The revision reads as follows:

§ 48.4082–1 Diesel fuel tax; exemption

* * * * *

(d) *Time for adding the dye and marker*—(1) *Removals from a terminal at the terminal rack; in general.* With respect to any removal from a terminal at the terminal rack, diesel fuel satisfies the dyeing and marking requirements of this paragraph (d) only if the dye and marker required by paragraphs (b) and (c) of this section are combined with diesel fuel—

(i) Before the fuel is received at the terminal;

(ii) While the fuel is in a bulk storage tank at the terminal; or

(iii) At the terminal rack by means of—

(A) A mechanical injection system described in paragraph (d)(2) of this section; or

(B) Nonconforming dyeing, under the conditions of paragraph (d)(3) of this section.

(2) *Removals from a terminal at the terminal rack; mechanical injection systems.* A mechanical injection system is described in this paragraph (d)(2) only if the district director has determined (and such determination has not been withdrawn) that the system contains—

(i) Features that automatically inject a measured amount of dye and marker into diesel fuel as the fuel is delivered

into the transport compartment of a truck, trailer, railroad car, or other means of nonbulk transfer;

(ii) Calibrated devices that accurately measure and record the amount of dye, marker, and fuel that is dispensed at the rack for each removal;

(iii) Shut-off devices that prevent the removal of more than 50 gallons of undyed diesel fuel in the case of a system malfunction; and

(iv) Locks or similar security equipment that secure the measurement devices and shut-off devices.

(3) *Removals from a terminal at the terminal rack; conditions for nonconforming dyeing.* Nonconforming dyeing meets the conditions of this paragraph (d)(3) only if diesel fuel is dyed and marked in the manner described in paragraph (d)(4) of this section and—

(i) The terminal operator has given a bond as a condition of registration under the provisions of § 48.4101–1(f)(4)(i); or

(ii) In the case of a terminal containing a mechanical injection system described in paragraph (d)(2) of this section—

(A) The accurate mechanical injection of dye and marker at the terminal cannot occur because of an equipment malfunction or a shutdown for maintenance purposes;

(B) Before beginning any nonconforming dyeing described in paragraph (d)(4) of this section, the terminal operator notifies the district director of the time, location, and type of malfunction or maintenance shutdown; and

(C) Immediately after correction of the malfunction or completion of the maintenance, the terminal operator notifies the district director that mechanical injection has resumed.

(4) *Removals from a terminal at the terminal rack; description of nonconforming dyeing*—(i) *In general.* Diesel fuel is dyed and marked in a manner described in this paragraph (d)(4) only if the diesel fuel is dyed and marked by means of a mechanical injection system described in paragraph (d)(4)(ii) of this section or manual dyeing described in paragraph (d)(4)(iii) of this section.

(ii) *Mechanical injection.* Diesel fuel is dyed and marked in a manner described in this paragraph (d)(4)(ii) if the diesel fuel is dyed and marked by means of a mechanical injection system that is not described in paragraph (d)(2) of this section and, with respect to the diesel fuel so dyed and marked, the terminal operator maintains a record of—

(A) The identity and registration number of the position holder;

(B) The identity and taxpayer identification number of the individual that physically receives the fuel at the terminal;

(C) The identity and taxpayer identification number of any individual that physically operates the mechanical injection equipment; and

(D) The volume of the fuel dyed and marked and the date and time of the dyeing.

(iii) *Manual dyeing.* Diesel fuel is dyed and marked in a manner described in this paragraph (d)(4)(iii) if—

(A) The terminal operator places a dye and marker of the type and concentration required by paragraphs (b) and (c) of this section into a compartment of a truck, trailer, railroad car, or other means of nonbulk transfer;

(B) The diesel fuel is removed from the terminal at the rack and is immediately delivered into the compartment described in paragraph (d)(4)(iii)(A) of this section; and

(C) With respect to the diesel fuel so dyed and marked, the terminal operator maintains a record of—

(*1*) The identity and registration number of the position holder;

(*2*) The identity and taxpayer identification number of the individual that physically receives the fuel at the terminal;

(*3*) The identity and taxpayer identification number of the individual that physically places the dye and marker into the compartment described in paragraph (d)(4)(iii)(A) of this section; and

(*4*) The volume of the fuel dyed and marked and the date and time of the manual dyeing.

(5) *Removals from refineries, sales or entries.* With respect to any removal from a refinery, sale, or entry, diesel fuel satisfies the dyeing and marking requirements of this paragraph (d) only if the dye and marker required by paragraphs (b) and (c) of this section are combined with diesel fuel before the removal, sale, or entry that would otherwise be subject to the tax imposed by section 4081. Thus, for example, diesel fuel that is entered into the United States by means of nonbulk transfer (such as in a railroad car) does not satisfy the requirements of this paragraph (d)(5) if the required dye and marker are combined with the diesel fuel after the fuel has been entered into the United States.

(6) *Cross reference.* For rules allowing inspection of equipment used for the dyeing of fuel, see section 4083.

(7) *Effective date.* This paragraph (d) is applicable as of April 1, 1997.

* * * * *

Par. 4. Section § 48.4101–1 is amended as follows:

1. Paragraph (b)(7) is added.
2. Paragraph (f)(4)(i) is amended by adding a sentence at the end of the paragraph.
3. In the first sentence of paragraph (j)(2) introductory text, the language ''A bond'' is removed and ''Except as provided in the last sentence of paragraph (f)(4)(i) of this section, a bond'' is added in its place.
4. Paragraph (l)(4) is added

The additions read as follows

§ 48.4101–1 Registration.

* * * * *

(b) * * *

(7) *Nonconforming dyeing amount.* The *nonconforming dyeing amount* is the product of—

(i) The rate of tax on diesel fuel provided by section 4081(a)(2); and

(ii) An amount up to the total number of gallons of diesel fuel expected to be dyed by nonconforming dyeing (and removed at terminal racks of the applicant that do not have a mechanical injection system described in § 48.4082–1(d)(2)) during a representative one-month period (as determined by the district director).

* * * * *

(f) * * *

(4) * * * (i) * * * An applicant that operates a terminal where diesel fuel is dyed by nonconforming dyeing (and removed at a rack that is not equipped with a mechanical injection system described in § 48.4082–1(d)(2)) meets the adequate security test only if the applicant has given a bond (in addition to any bond given under paragraph (j) of this section) equal to the nonconforming dyeing amount.

* * * * *

(l) * * *

(4) The last sentence of paragraph (f)(4)(i) of this section is applicable as of April 1, 1997.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 96–5587 Filed 3–13–96; 8:45 am]

BILLING CODE 4830–01–P

---

26 CFR Parts 48, 301, and 602

[LR–115–86; LR–77–88]

Gasoline

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notices of proposed rulemaking.

SUMMARY: This document withdraws the notices of proposed rulemaking relating to gasoline that were published in the Federal Register on November 18, 1987, and September 27, 1988, because of amendments to sections 4081 and 4101 of the Internal Revenue Code made by the Omnibus Budget Reconciliation Act of 1990 and the Omnibus Budget Reconciliation Act of 1993.

FOR FURTHER INFORMATION CONTACT: Frank Boland, (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On November 18, 1987, the IRS issued proposed regulations (LR–115–86) relating to tax on the sale or removal of gasoline (52 FR 44141) which were later proposed to be amended on September 27, 1988 (53 FR 37590). On September 27, 1988, the IRS issued proposed regulations (LR–77–88) relating to gasoline excise tax bond requirements (53 FR 37590). The Omnibus Budget Reconciliation Act of 1990 and the Omnibus Budget Reconciliation Act of 1993 amended sections 4081 and 4101. On July 22, 1992, final regulations (TD 8421) relating to gasoline tax under section 4081 as amended were published in the Federal Register (57 FR 32424). On November 30, 1993, temporary regulations (TD 8496) relating to registration requirements under section 4101 as amended were published in the Federal Register (58 FR 63069). Therefore, the earlier proposed rules are withdrawn.

List of Subjects

26 CFR Part 48

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Withdrawal of Notices of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notices of proposed rulemaking that were published in the Federal Register on November 18, 1987 (52 FR 44141) and September 27, 1988 (53 FR 37590) are withdrawn.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 96–5588 Filed 3–13–96; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 165

[CGD 05–96–008]

RIN 2115–AA97

Safety Zones: Elizabeth River and York River, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish three temporary safety zones on the Elizabeth and York Rivers during the dismantling and replacement of the Coleman Bridge. The proposed safety zones would include moving zones around the tugs and tows carrying the bridge spans as they transit the thirty miles between Norfolk International Terminals (NIT) and the Coleman Bridge, a stationary zone in the Elizabeth River at NIT, and a stationary in the York River at the Coleman Bridge. The safety zones are needed to ensure the safety of mariners operating in the vicinity and to ensure the safety of all personnel involved with the movement of the bridge spans.

DATES: Comments must be received on or before April 3, 1996.

ADDRESSES: Comments may be mailed to Commanding Officer, Marine Safety Office Hampton Roads, 200 Granby Street, Norfolk, VA 23510, or may be delivered to suite 700 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (804) 441–3290.

Comments will become part of the docket for this rulemaking and will be available for inspection or copying at suite 700, Marine Safety Office Hampton Roads between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Katherine Weathers, Chief, Port Safety and Security Branch, (804) 441–3290.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 05–96–008) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Commanding Officer, Marine Safety Office Hampton Roads at the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Background and Purpose

The Coleman Bridge, which crosses the York River, connecting Yorktown, Virginia to Gloucester, Virginia, is scheduled to be dismantled and replaced during April and May 1996. The new bridge is being constructed in six sections at NIT. These six spans will then be transported via barge thirty miles to the existing bridge site. The existing bridge will be dismantled in six sections and transported to NIT by the same method. The bridge spans range between 210 feet long and 559 feet long and will be resting perpendicular to the barges transporting them. Due to the size of the tows, the distance to be covered, and the busy port area in which the tows will be transiting, moving safety zones around the bridge spans while in transit and stationary safety zones at both NIT and the bridge site are necessary to protect those in the maritime community operating in the vicinity and those taking part in the project.

Discussion of Proposed Rule

The Coast Guard is proposing to establish a 500-yard moving safety zone around the tugs and tows transporting the bridge spans being used in the Coleman Bridge Replacement Project. Tows consisting of two or three barges abreast connected by pipe bracing and tension rods will be pulled by two tugs. The bridge spans will sit perpendicular to the barges atop steel towers simulating the height of the bridge piers. The barges are specially configured for the carriage of these spans and will be severely restricted in their ability to maneuver and susceptible to wake damage. Therefore, these moving safety zones are needed while the vessels transit each way between NIT and the Coleman Bridge in both loaded and unloaded conditions.

The stationary zones are needed at both the Coleman Bridge and at NIT

where the new spans are currently located. The proposed safety zone at the Coleman Bridge will consist of a 1000 yard zone, extending west upstream 500 yards from the bridge and east downstream 500 yards from the bridge. This safety zone would be in effect during the entire dismantling and replacement evolution. The proposed safety zone at NIT would include all waters within a line connecting red buoy 12 to red buoy 14, from buoy 12 due east across the Norfolk Harbor Reach of the Elizabeth River to land, and from buoy 14 due east across the reach to land. This proposed safety zone would only be enforced during the loading and unloading of the spans.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include: (1) Small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields; and (2) governmental jurisdictions with populations of less than 50,000. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under paragraph 2.B.2.e(34) of Commandant Instruction M16475.1B (as revised by 59 FR 38654; July 29, 1994), this proposal is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Rule

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; and 49 CFR 1.46.

2. A temporary § 165.T05–008 is added to read as follows:

§ 165.T05–008 Safety Zone: James River, Elizabeth River, Chesapeake Bay, Port of Hampton Roads, VA.

(a) *Location:* The following areas are safety zones:

(1) All waters within 500 yards of any tug and tow involved in moving the Coleman Bridge spans while in both loaded and unloaded condition while transiting in either direction between Norfolk International Terminals (NIT) located on the Elizabeth River at the Norfolk Harbor Reach and the Coleman Bridge, which crosses the York River connecting Yorktown, Virginia with Gloucester Point, Virginia.

(2) All waters within 500 yards upstream and 500 yards downstream of the Coleman Bridge in the York River.

(3) All waters within a line connecting red buoy 12 to red buoy 14, and a line drawn due east from buoy 12 due east across the Norfolk Harbor Reach of the Elizabeth River to land, and from buoy 14 due east across the reach to land. This zone will be enforced during the loading and unloading of the bridge spans at NIT.

(b) *Effective date:* This section is effective from 10 p.m. on April 26, 1966 to 10 p.m. May 30, 1996, unless sooner terminated by the Captain of the Port.

(c) *Definitions:*

Captain of the Port means the Captain of the Port of Hampton Roads, VA.

Designated representative of the Captain of the Port means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Hampton Roads to act on his behalf.

(d)(1) In accordance with the general provisions in §§ 165.23 and 165.501 of this part, entry into the zones described in paragraph (a) of this section is prohibited unless authorized by the Captain of the Port or his designated representative. The general requirements of §§ 165.23 and 165.501 also apply to this section.

(2) Persons or vessels requiring entry into or passage through the safety zones must first request authorization from the Captain of the Port or his designated representative. The Coast Guard vessels enforcing the safety zone can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port's representative at the Marine Safety Office, Hampton Roads, VA, can be contacted at telephone number (804) 441–3314.

(e) The Captain of the Port will notify the public of vessel movements and changes in the status of these zones by Marine Safety Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

Dated: February 29, 1996.

Dennis A. Sande,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 96–6056 Filed 3–13–96; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7170]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or

remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
California	Red Bluff (city) Tehama County.	Reeds Creek	Approximately 430 feet upstream of Southern Pacific Railroad.	*267	*268
			Just downstream of South Jackson Street	*267	*271
			Approximately 180 feet downstream of the western corporate limits.	*275	*279
		East Sand Slough	Just upstream of Gilmore Ranch Road extended, at the corporate limits.	*267	*267
			Approximately 150 feet downstream of Antelope Boulevard.	*269	*269
			Approximately 550 feet upstream of Antelope Boulevard.	*270	*271
		Brewery Creek Tributary.	Approximately 750 feet downstream of Monroe Avenue.	None	*274
			Approximately 130 feet downstream of Monroe Avenue.	None	*280
			Just upstream of Monroe Avenue	None	*291
Maps are available for inspection at the Community Development Department, City of Red Bluff, City Hall, 555 Washington Street, Red Bluff, California.					
Send comments to The Honorable Richard Bull, City Manager, City of Red Bluff, P.O. Box 400, Red Bluff, California 96080.					
Wyoming	Laramie (city) Albany County.	Laramie River	Approximately 2,260 feet downstream of Curtis Street.	*7,129	*7,129
			Just upstream of Curtis Street	*7,131	*7,132
			Just downstream of new Wyoming Highway.	*7,136	*7,137
			Just upstream of Interstate Highway 80	*7,141	*7,1412

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 1,000 feet upstream of Interstate Highway 80.	*7,143	*7,143

Maps are available for inspection at the City of Laramie, City Engineer's Office, City Hall, 406 Ivinson Street, Laramie, Wyoming.
Send comments to the Honorable Jim Rose, Mayor, City of Laramie, 406 Ivinson Street, Laramie, Wyoming 82070.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: March 7, 1996.

Richard W. Krimm,

Acting Associate Director for Mitigation.

[FR Doc. 96–6085 Filed 3–13–96; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CS Docket No. 96–46; FCC 96–99]

Open Video Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Notice of Proposed Rulemaking (''NPRM'') requests comment on issues concerning the implementation of the open video system provisions of the Telecommunications Act of 1996. The NPRM will assist the Commission in devising regulations in this area. The NPRM will provide interested parties an opportunity to submit comments that will provide the Commission with a sufficient record on which to base ultimate regulations.

DATES: Interested parties may file comments on or before April 1, 1996 and reply comments on or before April 11, 1996. Written comments by the public on the proposed and/or modified information collections are due on or before April 1, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before May 13, 1996.

ADDRESSES: Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Larry Walke of the Cables Services Bureau, 2033 M Street, N.W., Room 408A, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20054, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, N.W., Washington, D.C. 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Rick Chessen or Larry Walke, Cable Services Bureau, (202) 416–0800. For additional information concerning the information collections contained herein, contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's NPRM in CS Docket No. 96–46, FCC No. 96–99, adopted March 11, 1996 and released March 11, 1996. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, D.C. 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1919 M Street, NW., Washington, D.C. 20554.

Paperwork, Reduction Act

This NPRM contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the OMB for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding.

OMB Approval Number: None.

Title: Open Video System Operator Notification of Video Programming Providers.

Type of Review: New Third Party Disclosure.

Respondents: 20. This number is our preliminary estimation of open video system operators that may exist in the next year.

Number of Responses: 40. We anticipate that each open video system operator may make two notifications, annually.

Estimated Time Per Response: 8 hours per response.

Total Annual Burden: 320 hours. This is the estimated total annual burden though this burden will be determined by comments received.

Estimated costs per Respondent: At this stage in the rulemaking process, it is too preliminary to determine the specific requirements for the notifications to be made by open video system operators. This will be determined by comments received. It is possible that notifications may be required to be made in newspapers or trade journals. Should this be required, the Commission estimates publication costs of $1000 per notification. Estimated annual costs per respondent are therefore $2000 (2 notifications @ $1000 each).

Needs and Uses: This notification will inform video programming providers that the open video system operator intends to establish an open video system. This will permit video programming providers to assess their interest in seeking carriage on such systems.

I. Notice of Proposed Rulemaking

The 1996 Act repeals the Commission's ''video dialtone'' rules and regulations, which were established to permit telephone companies to participate in the video marketplace in a manner that was consistent with the telephone-cable cross-ownership ban. The 1996 Act also repeals the telephone-cable cross ownership rules imposed by the 1984 Cable Act, which prohibited telephone companies from providing video programming directly to subscribers in their telephone service

area. The general regulatory treatment for video programming services provided by telephone companies is now set forth in Section 302 of the 1996 Act, which establishes new Sections 651–653 of Title VI of the Communications Act of 1934 (''Communications Act'').

2. The 1996 Act has adopted a different regulatory approach, and establishes various options for telephone companies to enter video programming markets, one of which is providing cable service over an ''open video system'' under new Section 653 of the Communications Act. Open video systems will be a new service offered by telephone companies that will contain certain elements of both traditional cable service and common carriage. In this NPRM, we seek comment on how the Commission should implement the open video system provisions of the 1996 Act in a way that will promote Congress' goals of flexible market entry, enhanced competition, streamlined regulation, diversity of programming choices, investment in infrastructure and technology, and increased consumer choice. In setting forth questions in the NPRM, we do not mean to imply that we will find it necessary to adopt rules addressing each of the issues raised. Rather, these questions are designed to develop a record that will enable us to determine what rules, if any, the Commission should adopt.

3. Generally, Section 653 provides that, if a telephone company certifies that it complies with certain non-discrimination and other requirements established by the Commission, it's open video system will not be subject to regulation under Title II and will be entitled to reduced regulation under Title VI. The 1996 Act provides that the Commission must act upon a certification request within ten days of receipt. The 1996 Act also states that the Commission has the authority to resolve disputes regarding open video systems, but must do so within 180 days. The 1996 Act states that certain Title VI provisions shall not apply to open video systems, including, leased access obligations, franchise requirements and fees, cable rate regulation, and consumer protection and customer service rules.

4. This NPRM solicits comment on a number of relevant issues. First, new subsection 653(b)(1) of the Communications Act requires the Commission to prescribe regulations that (1) prohibit an open video system operator from discriminating among video programming providers with regard to carriage on the system, and (2) if demand exceeds capacity, prohibit the system operator and its affiliates from selecting the programming on more than one-third of the system's capacity. In order to implement Congress' directive, the NPRM seeks comment on the best method of implementing this provision. We seek comment on various issues related to implementing these provisions, including: (1) permitting open video system operators to allocate capacity on their system; (2) how much flexibility should be afforded to system operators in complying with these provisions; (3) a system operator's notifying video providers of its intent to establish an open video system; (4) an operator's discretion regarding programming: (5) how to measure capacity; (6) issues related to the distinction between analog and digital channels; (7) allocating capacity where demand for carriage exceeds capacity of the system; and (8) allocating capacity where the level of demand changes after the initial allocation of capacity.

5. Second, new subsection 653(b)(1)(A) also requires the Commission to prescribe rules that will ensure that rates, terms, and conditions for the carriage of video programming on an open video system meet the conditions described above. In order to implement this directive, the NPRM solicits comment on methods for the Commission's enforcement of rules implementing this statutory provision, including whether the rates determined under market forces will comport with this statutory provision. We also seek comment on whether the Commission, if it were to adopt rules in this area, should permit some measure of discrimination consistent with the Act.

6. Third, new subsection 653(b)(1)(C) of the Communications Act requires the Commission to prescribe regulations that permit an open video system operator ''to carry on only one channel any video programming service that is offered by more than one video programming provider, provided that subscribers have ready and immediate access to any such video programming service.'' In order to carry out this Congressional mandate, we first tentatively conclude that the open video system operator may administer channel sharing arrangements consistent with the Act. In addition, the NPRM solicits comment on issues relating to this provision, including: (1) the system operator's designation of another entity to administer channel sharing; (2) whether the Commission should prescribe any terms and conditions under which channels may be shared; (3) any technical differences exist between shared and non-shared channels that may permit system operators to discriminate among video providers in designating certain channels as shared; and (4) how to ensure that subscribers have ''ready and immediate access'' to the shared channels.

7. Fourth, the 1996 Act directs the Commission to prescribe regulations that extend our regulations concerning sports exclusivity, network non-duplication, and syndicated exclusivity to the distribution of video programming over open video systems. In order to implement Congress' directives, we seek comment on our tentative conclusion that these existing cable policies and procedures should be extended to open video systems, and any related issues.

8. Fifth, the 1996 Act directs the Commission to prescribe regulations that prohibit an open video system operator from unreasonably discriminating in favor of the operator or its affiliates with regard to material provided to subscribers for the purposes of selecting programming on the system, or in the way such material is presented to subscribers.

In addition, the Commission must require an open video system operator to ensure that video programming providers or copyright holders are able to identify their programming services to subscribers. Finally, the 1996 Act directs that the Commission prescribe regulations that prohibit an open video system operator from ''omitting television broadcast or other unaffiliated video programming services carried on such system from any navigational device, guide or menu.'' In order to implement Congress' directives, we seek comment on how to implement the various provisions of this subsection, including: (1) the meaning of the term ''material or information;'' (2) the meaning of the term ''selecting programming;'' (3) whether the prohibition against omitting broadcast stations and unaffiliated programmers from any ''navigational device, guide or menu'' applies to programmers that are not part of the subscriber's package; and (4) what would constitute proper identification of programming services.

9. Sixth, the 1996 Act provides that any provision that applies to cable operators under our PEG access, must-carry and retransmission consent rules shall apply ''to any [certified] operator of an open video system.'' It also provides that the Commission shall, to the extent possible, impose obligations that are no greater or lesser than the obligations imposed on cable operators. In order to carry out this Congressional mandate, we solicit comment on issues relating to this provision, including: (1)

how PEG obligations should be established given that the 1996 Act does not require a video system operator to obtain a local franchise; (2) the treatment of situations where an open video system overlaps several cable franchise jurisdictions; (3) the general effect of technological and administrative differences between open video systems and cable television systems on implementing these provisions. With respect to program access, the 1996 Act provides that these rules shall apply to any operator of an open video system. In order to carry out this Congressional mandate, the Commission should solicit comment on issues relating to this provision, including: (1) what entity should be subject to the rules, and (2) applying the program access provisions' requirement that ''competing distributors'' be involved. We also seek comment on applying other rules provisions of Title VI of the Communications Act to open video systems, pursuant to the 1996 Act, including those concerning ownership restrictions, regulation of carriage agreements, negative option billing, subscriber privacy, and equal employment opportunity.

10. Seventh, the 1996 Act provides generally that a local exchange carrier may provide cable service to its cable service subscribers in its telephone service area through an open video system, and that, to the extent permitted by Commission regulations, consistent with the public interest, convenience, and necessity, an operator of a cable system or any other person may provide video programming through an open video system that complies with this section. In order to implement Congress' directives, we seek comment on: (1) whether this language means that cable operators and others may or may not become open video system operators, or may only provide video programming on others' open video systems the circumstances under which this language permits cable operators and others to become open video system operators or programmers; (2) what public interest factors should be considered in permitting cable operators to either become open video system operators or provide video programming on open video systems; and (3) the treatment of the situation where a local exchange carrier jointly markets or bundles the offering of regulated telephone service and open video system video programming.

11. Eighth, the 1996 Act provides that an operator of an open video system shall qualify for reduced regulatory burdens under subsection 653(c) if the operator certifies to the Commission that it complies with the Commission's regulations under subsection 653(b) and the Commission approves such certification. The Commission must act on the certification within 10 days of receiving the certification. In order to implement Congress' directives, we seek comment on interpreting this language, including: (1) the approach we should take in establishing certification procedures, especially in light of this short statutory review period; and (2) the type of information that an open video system operator would be required to submit.

12. Ninth, the 1996 Act states that the Commission shall have the authority to resolve disputes under this section. The Commission must resolve any such dispute within 180 days, and may, in the case of a violation, require carriage, award damages, or both. In order to implement Congress' directives, we seek comment on: (1) whether the Commission should establish a dispute resolution procedure, such as the one employed to resolve program access disputes; and (2) in the alternative, establish more informal procedures which would require or encourage parties to first try to resolve the dispute without the Commission's direct involvement.

II. Initial Regulatory Flexibility Analysis

13. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, the Commission's Initial Regulatory Flexibility Analysis with respect to the NPRM is as follows:

14. *Reason for action:* The Commission is issuing this NPRM to seek comment on various issues concerning implementation of the open video system provisions of the 1996 Act.

15. *Objectives:* To provide an opportunity for public comment and to provide a record for a Commission decision on the issues discussed in the NPRM.

16. *Legal Basis:* The NPRM is adopted pursuant to Section 302 of the 1996 Act; and sections 1, 2, 4(i), 201–205, 215, 220, 303(r), 601–602, 611–616, 621–624, and 625–634 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 201–205, 215, 220, 303(r), 521–522, 531–536, and 545–554.

17. *Description, potential impact, and number of small entities affected:* Amending our rules to, for example, increase the programming distribution outlets for video programming providers, may directly impact entities which are small business entities, as defined in Section 601(3) of the Regulatory Flexibility Act.

18. *Reporting, recordkeeping, and other compliance requirements:* None.

19. *Federal rules which overlap, duplicate, or conflict with the Commission's proposal:* None.

20. *Any significant alternatives minimizing impact on small entities and consistent with state objectives:* The NPRM solicits comments on implementing the provisions of the 1996 Act concerning carriage by open video system operators of PEG access channels.

21. *Comments are solicited:* Written comments are requested on this Initial Regulatory Flexibility Analysis. These comments must be filed in accordance with the same filing deadlines set for comments on the other issues in this NPRM, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of the Notice to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

III. Initial Paperwork Reduction Act of 1995 Analysis

22. This NPRM contains either a proposed or modified information collection. As part of our continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (''OMB'') to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13. Public and agency comments are due at the same time as other comments on the NPRM; OMB comments are due May 13, 1996. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's 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.

IV. Procedural Provisions

23. *Ex parte Rules—Non-Restricted Proceeding.* This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in Commission's

rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206(a).

24. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before April 1, 1996, and reply comments on or before April 11, 1996. We find these periods for the filing of comments and reply comments to be reasonable in light of the 1996 Act's mandate that the Commission complete all actions necessary (including any reconsideration) to prescribe certain regulations concerning open video systems. See *Florida Power & Light Co*, v. *United States*, 846 F.2d 765 (D.C. Cir. 1988) *cert. denied*, 490 U.S. 1045 (1989). To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and nine copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Larry Walke of the Cables Services Bureau, 2033 M Street, N.W., Room 408A, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

25. Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Larry Walke of the Cable Services Bureau, 2033 M Street, N.W., Room 408A, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in ''read only'' mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

V. Ordering Clauses

26. It is ordered that, pursuant to Section 302 of the 1996 Act; and sections 1, 2, 4(i), 201–205, 215, 220, 303(r), 601–602, 611–616, 621–624, and 625–634 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 201–205, 215, 220, 303(r), 521–522, 531–536, and 545–554, Notice is hereby given of proposed amendments to Part 76, in accordance with the proposals, discussions, and statement of issues in this NPRM and that comment is sought regarding such proposals, discussion, and statements of issues.

27. It is further ordered that, the Secretary shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

28. For additional information regarding this proceeding, contact Rick Chessen or Larry Walke, Policy & Rules Division, Cable Services Bureau (202) 416–0800.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–6146 Filed 3–11–96; 3:40 pm]

BILLING CODE 6712–01–P

---

47 CFR Parts 36 and 69

[CC Docket No. 96–45; FCC 96–93]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: On March 8, 1996, the Federal Communications Commission (''Commission'') adopted a Notice of Proposed Rulemaking and Order Establishing Joint Board. The Commission initiates this rulemaking: to define the services that will be supported by Federal universal service support mechanisms; to define those support mechanisms; and to otherwise recommend changes to our regulations to implement the universal service directives of the Telecommunications Act of 1996.

DATES: Comments must be filed on or before April 8, 1996, and reply comments must be filed on or before May 3, 1996.

ADDRESSES: Comments should be addressed to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Senior Attorney, 202–418–0850, Accounting and Audits Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION:

Table of contents

	Paragraph
I. Introduction	1
II. Goals and Principles of Universal Service Support Mechanisms	3
III. Support for Rural, Insular, and High-Cost Areas and Low-Income Consumers.	
A. Goals and Principles	13
B. Support for Rural, Insular, and High Cost Areas.	
1. What Services to Support	15
2. How to Implement	24
3. Who Is Eligible for Support	41
C. Support for Low-Income Consumers.	
1. What Services to Support	50
2. How to Implement and Who Is Eligible for Support	59
D. Ensuring that Supported Services for Rural, Insular, and High-Cost Areas and Low-Income Consumers Evolve	66
IV. Schools, Libraries, and Health Care Providers	
A. Goals and Principles	71
B. Schools and Libraries.	
1. What Services to Support	77
2. How to Implement	82
3. Who Is Eligible for Support	87
C. Health Care Providers.	
1. What Services to Support	89
2. How to Implement	95
3. Who Is Eligible for Support	104
V. Enhancing Access to Advanced Services for Schools, Libraries, and Health Care Providers	
A. Goals and Principles	107
B. How to Implement	109
C. Who Is Eligible for Support	111
VI. Other Universal Service Support Mechanisms	112
VII. Administration of Support Mechanisms.	
A. Goals and Principles	116
B. Administration	
1. Who Should Contribute	118
2. How Should Contributions Be Assessed	121
3. Who Should Administer	127
VIII Composition of the Joint Board	132
IX. Procedural Matters	
A. Ex Parte	134
B. Regulatory Flexibility Analysis	135
C. Comment Dates	143
X. Ordering Clauses	145
Attachment: Service List	

I. Introduction

1. This Notice of Proposed Rulemaking and Order Establishing Joint Board (Notice) implements, in part, the Congressional directives set out in Section 254 of the Communications Act of 1934, as added by the Telecommunications Act of 1996 (1996 Act).[1] As required by Section 254(a)(1), we initiate this rulemaking to do the following: (1) Define the services that will be supported by Federal universal service support mechanisms; (2) define those support mechanisms; and (3) otherwise recommend changes to our regulations to implement the universal service directives of the 1996 Act.[2] We seek comment on all the matters discussed in this Notice. Also, pursuant to Section 254(a)(1), we order that a Federal-State Joint Board be convened in this docket, we appoint the individual members of the Federal-State Joint Board, and we refer the issues raised in this Notice to that Joint Board for the preparation of a Recommended Decision on these matters by November 8, 1996.[3]

2. We intend that our undertaking in this Notice be consistent with the language of the 1996 Act and the underlying Congressional intent. We are further guided by our past experience in addressing universal service issues, but only to the extent that experience can assist us in interpreting and effectuating our new statutory mandate. This Notice reflects our newly articulated statutory obligation to ensure that the definition of services supported by universal service support mechanisms and those mechanisms themselves evolve as advances in telecommunications and information technologies continue to present consumers with an ever increasing array of telecommunications and information services.[4] In accordance with Section 254(c)(2) of the 1996 Act, and as described below, we will periodically review, after obtaining further Joint Board recommendations, the definition of services supported by universal service mechanisms that we adopt in this proceeding, as well as the regulations adopted to implement the universal service mandates of the 1996 Act.[5]

II. Goals and Principles of Universal Service Support Mechanisms

3. Section 254(a)(1) of the Communications Act, as amended, requires the Commission to ''institute and refer to a Federal-State Joint Board under section 410(c) a proceeding to recommend changes to any of its regulations in order to implement sections 214(e) and [Section 254], including the definition of the services that are supported by Federal universal service support mechanisms and a specific timetable for completion of such recommendations.''[6] Section 254(b) requires that:

[T]he Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles:

(1) QUALITY AND RATES.—Quality services should be available at just, reasonable, and affordable rates.

(2) ACCESS TO ADVANCED SERVICES.—Access to advanced telecommunications and information services should be provided in all regions of the Nation.

(3) ACCESS IN RURAL AND HIGH COST AREAS.—Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

(4) EQUITABLE AND NONDISCRIMINATORY CONTRIBUTIONS.—All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.

(5) SPECIFIC AND PREDICTABLE SUPPORT MECHANISMS.—There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.

(6) ACCESS TO ADVANCED TELECOMMUNICATIONS SERVICES FOR SCHOOLS, HEALTH CARE, AND LIBRARIES.—Elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services as described in subsection (h).

(7) ADDITIONAL PRINCIPLES.—Such other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this Act.[7]

Prior to the 1996 Act, the Commission relied on Section 1 of the Communications Act of 1934[8] as the touchstone for virtually all major universal service policy discussions. The principles in Section 254(b) particularize and supplement our responsibility under that section of the Communications Act, as amended by the 1996 Act, ''to make available, so far as possible, to all the people of the United States *without discrimination on the basis of race, color, religion, national origin, or sex* a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges. * * *''[9]

4. We solicit comment on how each of the seven principles enunciated in Section 254(b) should influence our policies on universal service. For example, the first principle introduces the concept of ''quality services.''[10] We seek comment on how we can assess whether quality services are being made available. In particular, we seek comment on the utility of performance-based measurements to evaluate our success in reaching that Congressional objective. The first principle also directs us to ensure that quality service be available at ''just, reasonable, and affordable rates.''[11] While the Commission has often determined ''just and reasonable'' rates, we have not generally grappled with the notion of ''affordable''[12] in the context of universal service. We seek comment on whether there are appropriate measures that could help us assess whether ''affordable'' service is being provided to all Americans.[13]

5. As to the second principle, we seek comment on how to design our policies to foster access to advanced telecommunications and information services for ''all regions of the Nation.''[14] While in the past, the Commission has focused on bringing basic telecommunications services to as many American homes as possible, this principle instructs us to focus specifically on advanced telecommunications and information services. We seek comment on which advanced telecommunications and information services should be provided, and how to provide access effectively to Americans in various

[1] Telecommunications Act of 1996, Pub. L. No. 104–104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. 151 *et seq.*). For clarity, we refer to provisions of the 1996 Act using the sections at which they will be codified.

[2] 1996 Act sec. 101(a), Section 254(a)(1).

[3] S. Conf. Rep. No. 104–230, 104th Cong., 2d Sess. 131 (1996).

[4] 1996 Act sec. 101(a), § 254(c)(1).

[5] *Id.* § 254(c)(2).

[6] *Id.* § 254(a)(1).

[7] *Id.* 254(b).

[8] 47 U.S.C. 151.

[9] 47 U.S.C. 151, as amended by 1996 Act sec. 104, 151 (new language emphasized).

[10] 1996 Act sec. 101(a), § 254(b)(1).

[11] *Id.*

[12] Webster's New World Dictionary defines the term ''afford'' as follows: ''to have enough or the means for; bear the cost of without serious inconvenience.'' Webster's New World Dictionary at 23 (William Collins, Second College ed. 1980).

[13] For example, one such measure might be the level of telecommunications service subscribership among targeted populations.

[14] 1996 Act Sec. 101(a), § 254(b)(2).

geographic regions. We also seek comment on the cost of providing such access.

6. The third principle stresses that consumers in ''rural, insular, and high-cost areas'' and ''low-income consumers'' should have access to ''telecommunications and information services'' that are ''reasonably comparable to those services provided in urban areas.'' [15] In light of the further legislative intent to ''accelerate rapidly private sector deployment of advanced services to all Americans,'' [16] we believe that our goal should be to ensure that consumers ''in all regions of the Nation'' [17] and at all income levels, including low-income consumers, enjoy affordable access to the range of services available to urban consumers generally. We recognize, however, that the range of services is not likely to be identical for all urban areas, and may, as a practical matter, vary according to the demographic characteristics of consumers located in a given urban area. We seek comment on how best to incorporate that variation in our use of urban area service as a benchmark for comparative purposes.

7. The fourth and fifth principles refer to support mechanisms for universal service and will guide our efforts to establish those mechanisms through which funding essential to realizing our universal service goals will be collected and distributed. The fourth principle calls for ''equitable and non-discriminatory contributions: from ''all providers of telecommunications services,'' [18] while the fifth principle directs that the ''Federal and State mechanisms'' be ''specific, predictable and sufficient.'' [19] The sixth principle that will shape our deliberations states that ''elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services. * * *'' [20] We discuss these principles in Sections V and VI, below.

8. The final principle listed in Section 254 of the new legislation authorizes the Commission and the Federal-State Joint Board to base universal service policies on ''[s]uch other principles as [they] determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this Act.'' [21] We invite interested parties to propose additional principles relevant to the choice of services that should receive universal service support. We note, for example, a fundamental underlying principle of the 1996 Act is the Congressional desire ''to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies to all Americans.'' [22] In that context, we seek comment on whether we should ensure that the means of distributing universal service support should be competitively-neutral,[23] and the least regulatory possible, consistent with our statutory obligations. In addition, we specifically ask that commenters address whether and to what extent concerns for low income consumers or those in rural, insular, or high cost areas can or should be articulated as additional universal service principles pursuant to Section 254(b)(7) or should be considered in determining whether a particular service is ''consistent with the public interest, convenience, and necessity under Section 254(c)(1)(D).'' [24] We request the Joint Board's recommendations regarding all of these general policy issues raised by Section 254(b).

9. Section 254(c)(1) of the Act directs that:

> [T]he Joint Board in recommending, and the Commission in establishing, the definition of the services that are supported by Federal universal service support mechanisms shall consider the extent to which such telecommunications services—
>
> (A) are essential to education, public health, or public safety;
>
> (B) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;
>
> (C) are being deployed in public telecommunications networks by telecommunications carriers; and
>
> (D) are consistent with the public interest, convenience, and necessity.[25]

We interpret the statutory language of Section 254(c)(1) as manifesting Congressional intent that the Joint Board and the Commission consider all four criteria when deciding what services to support through Federal universal service. We interpret this language, however,—particularly the use of the word ''consider''—to allow the Joint Board and the Commission to include services that do not necessarily meet all of the four criteria. We seek comment and the Joint Board's recommendation on this interpretation. We also ask how we should evaluate whether a service or feature is ''essential to education, public health, or public safety.'' [26]

10. The fourth principle dictates that we must collect the revenues required to fund the universal service support mechanisms discussed here in an equitable and non-discriminatory manner. We seek detailed comments on the implications of this directive with respect to the mechanisms that will be employed to collect universal service contributions, below. Here, however, we seek comment on what standards we might use to help determine which, if any, ''providers of telecommunications services'' might be treated differently than others for ''equitable'' reasons.

11. The 1996 Act provides universal service support for two primary categories of services, each of which has two separate subcategories of intended beneficiaries: (1) A ''core'' group of services, the provision of which is to be supported for consumers with low incomes or in rural, insular, and high cost areas; and (2) additional services, including advanced telecommunications and information services, for providers of health care or educational services, as described in Sections 254(b)(6) and 254(h). As we interpret the 1996 Act, our first responsibility is to identify what core group of services should be supported by Federal universal support mechanisms, to enable the first group of beneficiaries to purchase those services at just, reasonable, and affordable rates. As to the second category of services, advanced telecommunications services for schools, libraries, and health care providers, Section 254(c)(3) authorizes the Commission ''to designate a separate definition of universal service applicable only to public institutional telecommunications users.'' [27] We note that, in regard to this provision, ''the conferees expect the Commission and the Joint Board to take into account the particular needs of hospitals, K–12 schools and libraries.'' [28] In Section 254(h), the Act created two distinct mechanisms for assuring the availability of these additional services to schools, libraries and health care providers. Section 254(h)(1) contemplates that there will be Federal support

[15] *Id.* § 254(b)(3). ''Insular'' areas refer to areas such as the Pacific Island territories. S. Conf. Rep. No. 104–230, 104th Cong., 2d Sess. at 131.

[16] S. Conf. Rep. No. 104–230, 104th Cong. 2d Sess 1 (1996).

[17] *Id.* § 254(b)(2).

[18] *Id.* § 254(b)(4).

[19] *Id.* § 254(b)(5).

[20] *Id.* § 254(b)(6).

[21] *Id.* § 254(b)(7).

[22] S. Conf. Rep. No. 104–230, 104th Cong., 2d Sess. 1 (1996).

[23] The contribution mechanism is expressly required to be ''equitable and non-discriminatory.'' 1996 Act sec. 101(a), § 254(d).

[24] *Id.* § 254(b)(7).

[25] *Id.* § 254(c)(1).

[26] See *Id.* § 254(c)(1)(A).

[27] S. Conf. Rep. No. 104–230, 104th Conf., 2d Sess. 133 (1996).

[28] *Id.*

mechanisms to enable eligible health care providers in rural areas, schools and libraries to obtain access to these additional services, as well as the core services discussed above. In addition, the second mechanism, found in Section 254(h)(2), directs the Commission to adopt competitively neutral rules to enhance for all eligible health care providers,[29] libraries and schools access to advanced telecommunications and information services to the extent technically feasible and economically reasonable. In this Notice, we will address both of these definitions and their respective potential support mechanisms separately.

12. We do not address Sections 254(f), 254(g), or the last sentence in Section 254(k) in this Notice, nor do we refer issues relating to them to the Federal-State Joint Board convened by this Order. Section 254(f) is directed to the states and to what they may or may not do to advance universal service goals. Section 254(g) has an explicit timetable separate and distinct from that in Section 254(a),[30] and we believe these separate timetables, which are not reconcilable, indicate that Section 254(g) does not need Joint Board consideration. The last sentence in Section 254(k) states that ''[t]he Commission, with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that the services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.'' [31] The explicit use of the language ''the Commission, with respect to interstate services, and the States, with respect to intrastate services,'' indicates that Congress intended to give the separate jurisdictions the flexibility to review these issues separately.[32]

III. Support for Rural, Insular, and High-Cost Areas and Low-Income Consumers

A. Goals and Principles

13. In this section, we seek to answer several basic questions concerning the design and operation of the support mechanisms for rural, insular, and high cost areas as well as for low-income consumers. In our search, we are guided by the principles in Section 254 relating to our obligations toward rural, insular, and high-cost areas and low-income consumers.

14. The first universal service principle relevant to consumers in rural, insular, and high-cost areas set forth in the 1996 Act is that ''[q]uality services should be available at just, reasonable, and affordable rates.'' [33] Prior to the 1996 Act, the Communications Act of 1934 required that rates for telephone services subject to our jurisdiction be just and reasonable, without unjust or unreasonable discrimination,[34] but did not expressly require that the rates be affordable to the average telephone subscriber or to any designated group of subscribers. The 1996 Act makes explicit that our universal service policies should promote affordability of quality telecommunications services. We seek comment proposing standards for evaluating the affordability of telecommunications services. We note that the Act specifically provides that telecommunications services—not just the narrow category of telephone exchange service—be affordable.[35] The second relevant principle is that ''[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation.'' [36] We seek comment on whether the Act requires that all regions of the country must have access to all telecommunications and information services, and if so, how this can best be effectuated in a ''pro-competitive, de-regulatory environment.'' [37] The third principle we address here is that ''[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high-cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services'' reasonably comparable to those provided in urban areas and at reasonably comparable rates.[38] This principle directs us to go beyond the purpose and approach of the current Universal Service Fund (USF) program [39] by focusing on the comparability of access to services available throughout the country, as well as on the comparability of rates.[40]

B. Support for Rural, Insular, and High Cost Areas

1. What Services to Support

15. In this section, we discuss specific telecommunications services we propose to include among the services that, with respect to rural, insular, and high cost areas, should receive universal service support. As to each of these ''core'' services, we seek comment on our proposal to designate the service for

[29] Section 254(h)(5)(B) defines ''health care provider'' to mean:

(i) post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools;

(ii) community health centers or health centers providing health care to migrants;

(iii) local health departments or agencies;

(iv) community mental health centers;

(v) not-for-profit hospitals;

(vi) rural health clinics; and

(vii) consortia of health care providers consisting of one or more entities described in clauses (i) through (vi).

1996 Act sec. 101(a), 254(h)(5)(B).

[30] Section 254(a) requires the Joint Board to make its recommendation to the Commission nine months after the date of enactment of the 1996 Act and requires the Commission to complete its proceedings within 15 months of the date of enactment. Id. § 254(a). Section 254(g), however, requires the Commission to adopt rules ''within 6 months after the date of enactment'' of the 1996 Act ''to require that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas.'' *Id.* § 254(g).

[31] *Id.* § 254(k).

[32] We are planning to commence a rulemaking shortly to implement the provision in Section 254(k) calling for the Commission ''with respect to interstate services * * * [to] establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.'' *Id.* § 254(k). This proceeding will be a vehicle for all interested parties, including State regulators and consumer advocates, to address issues of common concern and interest relating to development of accounting safeguards for universal service support mechanisms.

[33] *Id.* § 254(b)(1).

[34] *See* 47 U.S.C. 201–202.

[35] *See* 1996 Act sec. 101(a), § 254 (c), (i). The 1996 Act defines ''telecommunications service'' as ''the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.'' *Id.* § 153(51).

[36] 1996 Act sec. 101(a), § 254(b)(2).

[37] S. Conf. Rep. No. 104–230, 104th Cong., 2d Sess. 1 (1996).

[38] 1996 Act sec. 101(a), § 254(b)(3).

[39] The current USF program is designed to ''preserve universal service by enabling high cost companies to establish local exchange rates that do not substantially exceed rates charged by other companies.'' MTS and WATS Market Structure, Third Report and Order, 93 FCC 2d 241 (1983).

[40] By means other than through the USF, the Commission has also sought to ensure service to rural areas. For example, in Basic Exchange Telecommunications Radio Service, Report and Order, 3 FCC Rcd 214 (1988), we acknowledged that many rural households do not have standard telephone service because the cost of wiring remote locations is prohibitive. In response, the Commission established the Basic Exchange Telephone Radio Systems (BETRS) to allow access by LECs to shared frequencies to provide wireless local loops. More recently, in amending our rules for competitive bidding for Personal Communications Systems (PCS) licenses, we permitted rural telephone companies to obtain broadband PCS licenses that are geographically partitioned from larger PCS service areas (through a partial license transfer) in an effort to ensure that rural areas receive broadband PCS. Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Fifth Report and Order, 9 FCC Rcd 5532 (1994).

universal service support. We also ask commenters to discuss the extent to which each of the proposed services is in accordance with the principles and criteria in Sections 254(b) and 254(c)(1), discussed above. In accordance with the principle of the 1996 Act that support mechanisms should be ''specific, predictable, and sufficient,'' [41] we also ask the commenters to identify the total amount currently required for each included service.

16. We seek comment regarding whether the following services should be included among those core services receiving universal service support: (1) Voice grade access to the public switched network, with the ability to place and receive calls; (2) touch-tone; (3) single party service; (4) access to emergency services (911); and (5) access to operator services.

17. We invite commenters to identify additional services that meet the statutory criteria of Section 254(c)(1) and therefore should be among the services that should receive universal service support.[42] Commenters should discuss the extent to which each of the proposed services specifically meet those statutory criteria and further the principles established in Section 254(b). In addition, given that the 1996 Act specifies that common carriers ''shall * * * offer the services that are supported by Federal universal service support mechanisms'' in order to be designated as eligible telecommunications carriers and thus eligible for universal service support,[43] and that the Joint Statement stresses the importance of ''opening all telecommunications markets to competition,'' [44] we seek comment regarding the competitive effect of our proposed definition. Specifically, we ask whether providing universal service support for each proposed service could serve as a barrier to entry by new competitors or favor one technology over another, perhaps more efficient, technology. Our goal is to adopt universal service rules that are competitively and technologically neutral so that our rules do not unreasonably advantage one particular technology or class of service provider over another technology or service provider.[45]

18. *Voice Grade Access to the Public Switched Telecommunications Network.* We believe that voice grade service, whether provided by wireline or wireless technologies,[46] should be considered indispensable because it enables direct calling into the network, is provided throughout public telecommunications networks,[47] and is subscribed to by a substantial majority of residential customers.[48] Because it enables consumers to reach schools, emergency medical assistance, doctors, law enforcement authorities, and fire departments, it appears to be essential to education, public health, and public safety.[49] Including voice grade service among the services that should receive universal service support would also appear to be consistent with the public interest, convenience, and necessity. We seek comment as to whether, and at what performance level, voice grade service should be included among the services that should receive universal service support.

19. *Touch-tone.* Touch-tone is a generic term for technology that involves the use of a push-button telephone set that transmits, and a local switch that receives, a dual-tone multifrequency signal (DTMF). Touch-tone is widely deployed throughout public telecommunications networks, and consumers widely subscribe to it.[50] We note that touch-tone is becoming increasingly indispensable for subscribers in order for them to interact with automated information systems, and thus may be essential for effective use of educational services. It also increases the speed at which subscribers are able to reach emergency service providers, and thus appears essential for public health and safety.[51] Including touch-tone service among the services that should receive universal service support would also appear to be consistent with the public interest, convenience and necessity.[52] We seek comment as to whether touch-tone service should be included among those supported services. We also request that interested parties provide information regarding any service other than touch-tone that would serve the same general function as touch-tone service.[53] In addition, we ask whether the provision of such services should be treated the same as the provision of touch-tone service for purposes of determining a carrier's designation as an eligible carrier.[54]

20. *Single Party Service.* Single party service is also generally available throughout the public telecommunications network and is subscribed to by a majority of residential customers.[55] Single party service helps ensure that subscribers will be able to reach emergency service and health care providers without delay and may therefore be essential to public health and public safety.[56] In addition to affording subscribers privacy, single party service facilitates access to many information technologies. Many residential subscribers use modems to access advanced services like home banking, the Internet and commercial computing services. Because modems currently are required for computer users to have access to those services, single party service may be becoming even more important to residential computer users in the future, and requiring it may therefore be consistent with the public interest, convenience, and necessity. We seek comment as to whether single party service should be included among the services that should receive universal service support.

21. *Access to Emergency Services.* Access to emergency services, including 911 service, is essential to public health or public safety and, as such, consistent with the public interest, convenience, and necessity.[57] Additionally, such services are widely deployed throughout public telecommunications networks and, though generally provided as part of residential service without any customer intervention, are available to a substantial majority of residential customers.[58] In much of the nation, 911 service merely connects subscribers with an emergency service that includes local police and fire

[41] 1996 Act sec. 101(a), § 254(b)(5).

[42] We have expressly not included Telecommunications Relay Services (TRS) within the list of services proposed for universal service support, because those services are already served by the existing TRS support mechanism, established pursuant to Section 401 of the Americans with Disabilities Act, 47 U.S.C. 225.

[43] 1996 Act sec. 102(a), § 214(e)(1).

[44] See S. Conf. Rep. No. 104–230, 104th Cong., 2d Sess. 1 (1996).

[45] See, *e.g.,* 1996 Act sec. 101(a), § 254(h)(2) (directing Commission to ''establish *competitively neutral* rules—to enhance * * * access to advanced * * * services for * * * school classrooms, health care providers, and libraries'') (emphasis added).

[46] We recognize that all voice grade services may not have identical transmission characteristics and, in particular, that there may in some cases be differences in the capacity of wireline and wireless services.

[47] 1996 Act sec. 101(a), Section 254(c)(1)(C).

[48] *Id.* § 254(c)(1)(B).

[49] *Id.* § 254(c)(1)(A).

[50] *Id.* § 254(c)(1) (B)–(C).

[51] *Id.* § 254(c)(1)(A).

[52] *Id.* § 254(c)(1)(D).

[53] Push button telephone sets are used with ISDN lines but signalling typically is accomplished through the transmission of digital signals instead of DTMF signals. Bellcore's BOC Notes on the LEC Networks, 1994, Section 14. These digital signals provide all of the functionalities available with DTMF signals.

[54] See 1996 Act sec. 102(a), § 214(e)(1)(A).

[55] Id. § 254(c)(1) (B)–(C). Single party service occurs when exactly one subscriber may use a local loop to originate or terminate calls.

[56] Id. § 254(c)(1) (A), (D).

[57] *Id.*

[58] *Id.* § 254(c)(1)(B)–(C).

departments. Enhanced 911 service adds capabilities, such as automatic number identification and automatic location information,[59] to the basic 911 service. These additional capabilities ''are being deployed in public telecommunications networks by telecommunications carriers'' [60] and appear ''consistent with the public interest, convenience, and necessity.'' [61] They also may be ''essential to ''public health[] or public safety,'' [62] and, in the future, provided to a substantial majority of residential subscribers.[63] To ensure a complete record on this issue, we invite comment on whether we should include access to enhanced 911 service among the services that should receive universal service support in the event we include basic 911 service in that group.

22. *Access to Operator Services.* Similarly, access to operator services would appear indispensable for both at-home and away-from-home users in public health or public safety emergencies and, as such, would appear to be consistent with the public interest, convenience, and necessity.[64] Operator services are available throughout the public switched network and are used by at least a substantial majority of residential customers, even though customers are often charged for using those services.[65] We seek comment as to whether access to operator services should be included among the services that should receive universal service support.

23. We also invite commenters to identify services other than those listed above that should be included among the services that should receive universal service support, based on the four criteria specified in Section 254(c)(1). For instance, interested parties may wish to address the inclusion of relay services, directory listings, and equal access, to the extent that such a requirement would be consistent with the Act.[66] In particular, because of the directive in Section 254(b)(3) relating to ''access to * * * interexchange services,'' [67] we seek comment on whether access to interexchange services should also be included among those services receiving universal service support. Finally, we invite parties to discuss advanced services that may warrant inclusion, now or in the future, in the list of services that are supported by universal service support mechanisms. For example, within the context of the criteria discussed in Section 254(c)(1),[68] commenters may wish to discuss Internet access availability, data transmission capability, optional Signalling System Seven features or blocking of such features, enhanced services, and broadband services.

2. How to Implement

24. With respect to each support mechanism, we must determine the beneficiaries of the support. For example, we ask parties to address whether support for rural, insular, and high-cost areas should be limited to residential users or residential and single-line business users, or should be provided to all users in such areas. We also seek comment on the method for calculating support amounts. We ask parties to address whether support should be calculated based on inputs (for example, facility costs would determine subsidy amounts) or based on outputs (the price of services would determine support levels). In answering these questions, commenters should consider all applicable provisions of the 1996 Act, especially the three general principles enumerated in the Act applicable to support for rural, insular and high-cost areas and for low-income consumers.[69] We seek comment on how assistance for rural, insular, and high cost areas should be calculated and distributed, and request that the Federal-State Joint Board prepare recommendations in this regard.

a. How to Determine ''Affordable'' and ''Reasonably Comparable''.

25. Section 254(b)(3) states that rates for services in rural, insular, and high cost areas should be reasonably comparable to rates charged for similar services in urban areas of the country.'' [70] Section 254(i) charges this Commission and the States with responsibility for assuring that the service rates throughout this country should be ''just, reasonable and affordable.'' [71] We seek comment on how we should determine rate levels that would be ''affordable'' and ''reasonably comparable'' for services identified as requiring universal service support. We ask commenters to identify the criteria or principles that should guide this determination, the methods we should use to evaluate the required rate levels, and whether there should be procedures to recalibrate these rate levels to reflect changes in inflation or other factors that may make such recalibration periodically necessary.

26. We seek comment on, for example, whether support should be based on achieving specific end-user prices. We also seek comment on how we should determine the level of prices for designated telecommunications services that are ''comparable to rates charged for similar services in urban areas.'' [72] In addition, we ask whether prices should vary depending on whether the customer is a non-business subscriber, a single-line business subscriber, or a multi-line business subscriber. Finally, we seek comment on the extent to which a subsidy should be provided to assure affordable and reasonably comparable rates for services using other than a primary line to a principal residence. We refer these issues to the Joint Board for its recommendation.

b. How to Calculate the Subsidy.

27. We also seek comment to identify methods for determining the level of support required to assure that carriers are financially able to provide the services identified for inclusion among those to be supported by universal service funds in rural, insular, and high-cost areas. The method we ultimately adopt should be as simple to administer as possible, technology-neutral, and designed to identify the minimum subsidy required to achieve the statutory goal of affordable and reasonably comparable rates throughout the country. It should be equitable and non-discriminatory in the burden that it imposes upon contributors, and its distribution procedures should be direct, explicit, and specific.

28. The existing universal fund mechanism operates through our Part 36 rules. The subpart that concerns the universal service fund allows LECs with above-average costs to recover a designated portion of those above-average costs from the interstate jurisdiction and, in particular, from the universal service fund, to which only some interexchange carriers must contribute. This frees the LEC recipients

[59] Automatic number identification provides the called party with the telephone number from which the call was placed. Automatic location information allows the called party to use that telephone number to determine the address or other location from which the call was placed.

[60] 1996 Act sec. 101(a), § 254(c)(1)(C).

[61] *Id.* § 254(c)(1)(D).

[62] *Id.* § 254(c)(1)(A).

[63] *See id.* § 254(c)(1)(B).

[64] *Id.* § 254(c)(1)(A), (D).

[65] *Id.* § 254(c)(1)(D).

[66] We note, for example, that Section 705 of the 1996 Act leaves, for a future Commission proceeding, the issue of whether commercial mobile service providers should be required to provide equal access. Any proposal to include unblocked access as an element of universal service obligation for commercial mobile service providers thus would be premature. 1996 Act sec. 705.

[67] *Id.* § 254(b)(3).

[68] *Id.* § 254(c)(1).

[69] *See* part III.B.1, *supra.*

[70] 1996 Act sec. 101(a), § 254(b)(3).

[71] *Id.* § 254(i).

[72] *Id.* § 254(b)(3).

from the need to recover all of their costs from their own customers and in so doing is intended to moderate local rate levels. The existing mechanism may, however, give recipients of assistance, currently limited to incumbent LECs, a substantial advantage over competitors who must recover all of their costs from their customers. It may also not be the sort of ''explicit'' support mechanism contemplated in Section 254(e).[73]

29. The dial equipment minute (DEM) weighting assistance program is based on the theory that smaller telephone companies have higher local switching costs than larger LECs have, because the smaller companies cannot take advantage of certain economies of scale.[74] Our jurisdictional separations rules allow LECs with fewer than 50,000 access lines to allocate to the interstate jurisdiction a greater proportion of these local switching costs than larger LECs may allocate. For these small LECs, the actual DEM is weighted (*i.e.* multiplied by a factor) to shift some intrastate costs to the interstate jurisdiction. DEM weighting is specifically provided outside of, and unrelated to, the USF program. Unlike the USF, DEM weighting applies only to small LECs, and to all small LECs, regardless of their actual costs.

30. We seek comment on whether continuing to use the Commission's jurisdictional separations rules to subsidize LECs with above-average loop costs, or the local switching costs of small LECs, is consistent with Congress's intent ''to provide for a pro-competitive, de-regulatory national policy framework * * * opening all telecommunications markets to competition,'' [75] or with its intent relating to the characteristics of universal service support mechanisms to be adopted pursuant to Section 254. Many entities, among them non-wireline and non-dominant carriers, that might be designated ''eligible telecommunications carrier[s]'' by the appropriate State commission, are not now subject to our separations rules, which apply only to LECs.[76] We also seek comment in this connection regarding the statutory requirement ''that any support mechanisms continued or created under new section 254 should be explicit,'' [77] and we request the Joint Board to address this principle in its recommendation.

31. We also request comment regarding a specific proxy model submitted to this Commission by several telecommunications carriers (Joint Sponsors), which we specifically incorporate by reference into this proceeding.[78] Once we determine what constitutes affordable rates for services designated for universal service support, this model might be used to determine the level of subsidy required to bring services priced at affordable levels to consumers in high-cost, rural, and insular areas. We seek comment on how this objective could be achieved. The Joint Sponsors collaborated during the past year to develop a Benchmark Costing Model (Model) for calculating a ''benchmark'' cost, or standard assumed level of expense, for the provision of local telecommunications access in every census block group [79] in the United States, excluding Alaska and the territories, if service is provided by a wireline carrier.[80]

32. The purpose of the Model is to identify areas where the cost of service can reasonably be expected to be so high as to require explicit high-cost support for the preservation of universal service. The Model produces a benchmark cost range for a defined set of residential telecommunications services assuming efficient wireline engineering and design, and using current technology. It is not based upon the costs reported by any company, nor the embedded cost to a company of providing service today. The Model bases projected costs on the least-cost wireline technology to serve a particular area, given that area's geographic and population characteristics. As a threshold inquiry, we ask whether the model should be made technology neutral, in order to provide for non-wireline service where such service would be economical. In addition, we ask whether, in addressing the Model specifically or these issues generally, we should base our determinations on embedded costs or forward-looking costs, to the extent that costs are relevant to the support mechanisms for rural, insular, and high-cost areas.

33. We also solicit comment regarding a proxy model that incorporates data showing the location of actual residential and business customers.[81] The party offering this model claims it can be adapted for use by wire center, or even by specific consumer, as well as by census block group, but also acknowledges that, as currently designed, it relies on proprietary information that cannot be reviewed by other interested parties. We seek comment regarding the merits of this proxy model. Specifically, we ask whether using an incumbent LEC's wire centers as the geographic unit for calculating universal service support accords with our policy of competitive and technological neutrality.

34. In addition, we ask whether census block groups are the best geographic units for developing a proxy model, or whether alternative units would be more accurate or easier to administer. We invite comment regarding the Model's assumptions about the likely distribution of subscribers within a census block group. For example, we seek comment whether the assumption of uniform population distribution adequately reflects the possibility that in some rural areas, despite the theoretical sparsity, all lines are clustered near a single location. The Model also excludes business lines from its analysis.[82] We invite comment as to whether the Model might therefore show unduly high residential costs in some census block groups, in that the exclusion of business lines could produce an overstated calculation of the projected cost per line. We also ask whether a model that included business lines might be more accurate. We also seek comment regarding the engineering assumptions on which the Joint Sponsors rely, and whether the Model could be improved by the addition of other variables, such as climate or slope. Conversely, we seek comment on whether the Model contains any redundant or superfluous variables.

35. We also solicit comment on whether relying on a competitive bidding process to set the level of subsidies required in rural, insular, and high-cost areas would be consistent with Section 214(e), which addresses the circumstances under which telecommunications carriers are eligible

[73] *Id.* § 254(e).

[74] Dial equipment minutes are the minutes of holding time of originating and terminating local dial switching equipment. The jurisdictional separations rules allocate local switching equipment costs between the interstate and intrastate jurisdictions on the basis of each jurisdiction's relative number of dial equipment minutes of use.

[75] See S. Conf. Rep. No. 104–230, 104th Cong., 2d Sess. 1 (1996).

[76] 1996 Act sec. 102(a), § 214(e).

[77] *Id.* § 254(e).

[78] MCI Communications Inc., NYNEX Corporation, Sprint/United Management Co., and US West, Inc., Benchmark Costing Model: A Joint Submission, Copyright 1995, CC Docket No. 80–286 (Dec. 1, 1995) (Joint Submission). The Joint Sponsors are US West, Nynex, MCI, and Sprint.

[79] A census block group is a geographic unit defined by the Bureau of the Census. Each census block group contains approximately 400 households.

[80] See Joint Submission.

[81] *See ex parte* submission in CC Docket No. 80–286 by Gina Harrison, Director, Federal Regulatory Relations, Pacific Telesis Group (February 29, 1996).

[82] Joint Submission at I–2.

to receive universal service support.[83] Carriers offering all of the services supported by universal service mechanisms would bid on the level of assistance per line that they would need to provide all supported services. Such an approach would attempt to harness competitive forces to minimize the level of high-cost assistance needed to implement our statutory mandate in areas where competition has developed.[84]

36. In such areas, competing carriers would bid to set the level of assistance per line that any carrier serving a specified area would receive, with the lowest bid winning. Although the low bidder would determine the amount of support per line served that eligible carriers would receive, any authorized carrier would be able to receive assistance at that level. The low bidder, however, would receive an additional ''incentive bonus.'' The bonus would be necessary to induce competitors to underbid one another, rather than merely accepting the established level of assistance.

37. We acknowledge that market conditions may not warrant the introduction of this plan at present. Nevertheless, we believe competitive local exchange markets may develop even in high-cost areas, and therefore request comment regarding distributing high-cost assistance on the basis of competitive bids.

38. We request that the Federal-State Joint Board prepare recommendations regarding the best means of establishing a new universal service support mechanism for rural, insular, and high-cost areas. In preparing its recommendation, we ask the Joint Board to give the greatest weight to effective implementation of the Telecommunications Act of 1996, enabling us to carry out the requirements of the Act in the manner most consistent with the principles and intentions expressed in the Act itself.

39. The legislative history of the 1996 Act makes clear that we are to take a new approach in designing support mechanisms for universal service, and that the proceeding in CC Docket No. 80–286 is not an appropriate foundation on which to base this proceeding.[85] We wish, however, to preserve the relevant portion of the record that would be consistent with the principles of the 1996 Act. To avoid unnecessary duplication of efforts by interested parties and regulators, we are incorporating by reference that portion of the CC Docket No. 80–286 record that relates to changing the support mechanisms in our jurisdictional separations rules into this proceeding.[86] With respect to the proposals raised in that proceeding, we request that interested parties specifically comment on which, if any, of those proposals are consistent with the requirements and intent of the 1996 Act.

c. Transition Issues.

40. At present, LECs with loop costs more than 115 percent above the national average receive support from the Universal Service Fund described in part II.B.2.b., above. At present, there is a cap on the rate at which the fund may grow. That cap is scheduled to expire on July 1, 1996. We seek comment on whether we should extend the cap until the completion of the Joint Board's and our deliberations in this proceeding. We also seek comment on whether the principles governing our deliberation would permit, or even require, a transition period for carriers, particularly recipients of subsidies achieved through our separations rules (*e.g.*, the USF and DEM weighting rules), to adjust to operating the statutory framework erected by the Telecommunications Act of 1996.

3. Who Is Eligible for Support

41. In addition to instructing us to define which telecommunications services carriers receiving support must provide, the 1996 Act also specifies the eligibility requirements carriers must satisfy in order to receive universal service support. Under Section 214(e), support is available only to ''common carrier[s]'' designated as ''eligible telecommunications carrier[s]'' by the appropriate State commissions.[87] Section 254(e) also requires that ''[a]ny carrier that receives support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.'' We request comment, and a corresponding recommendation from the Joint Board, regarding the need for any measures to ensure that support is used for its intended purpose. Similarly, we ask for comment regarding the need for additional measures to ensure that ''telecommunications carrier[s]'' do not ''use services that are not competitive to subsidize services that are subject to competition.''[88] We also invite commenters to propose means to ensure that all eligible carriers—and no ineligible carriers—receive the appropriate amount of universal service support.

42. In areas served by a ''rural telephone company,'' as defined by Section 3 of the 1996 Act,[89] the State commission may choose to designate ''more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission'' if that commission finds ''that the designation is in the public interest.''[90] In other areas, the State commission must upon request designate as an ''eligible carrier'' any common carrier meeting the universal service requirements specified in Section 214(e)(1).

43. Section 214(e)(1) requires an eligible carrier to offer ''the services that are supported by Federal universal service support mechanisms under Section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services.''[91] Each eligible carrier must also ''advertise the availability of such services'' and the charges for those services ''using media of general distribution.''[92] We seek comment regarding, and ask the Joint Board to recommend, standards for compliance with these requirements.

44. Each State commission may specify the ''service area'' within which a common carrier is classified as an ''eligible carrier.'' The 1996 Act defines ''the term 'service area' [to mean] a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms.''[93] With respect to rural telephone companies, ''service area'' means a company's study area,[94] ''unless and

[83] Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, Notice of Proposed Rulemaking and Notice of Inquiry, 10 FCC Rcd 12309 (1995). We discuss Section 214(e) in part III.B.3., *infra.*

[84] We acknowledge that, at present, there may be only one eligible carrier in some rural, insular, or high cost areas. Bidding to set the level of support payments cannot take place until competitors enter the market.

[85] S. Conf. Rep. No. 104–230, 104th Cong., 2d Sess. 131 (1996).

[86] Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, *Notice of Inquiry*, 9 FCC Rcd 7404 (1994), and comments, reply comments, and *ex parte* submissions responsive thereto; Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, *Order*, 9 FCC Rcd 7962 (1994) (*Data Request*) and responses thereto; and Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, *Notice of Proposed Rulemaking and Notice of Inquiry*, 10 FCC Rcd 12309 (1995), and comments, reply comments, and *ex parte* submissions responsive thereto.

[87] 1996 Act sec. 102(a), § 214(e).

[88] *Id.* § 254(k).

[89] *Id.* § 153(47).

[90] *Id.* § 214(e)(2).

[91] *Id.*

[92] *Id.* § 214(e)(1)(B).

[93] *Id.* § 214(e)(5).

[94] ''Each study area'' is generally a LEC's service area in a given State. The study area boundaries are fixed as of November 15, 1984. MTS and WATS Market Structure; Amendment of Part 67 of the

until the Commission and the States, taking into account the recommendations of a Federal-State Joint Board instituted under Section 410(c), establish a different definition of service area for such a company.'' [95] The 1996 Act defines ''rural telephone company'' as a ''local exchange carrier operating entity to the extent that such entity—(A) Provides common carrier service to any local exchange carrier study area that does not include either—(i) Any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or (ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993; (B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines; (C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or (D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.'' [96]

45. We solicit comment on how to define ''study area'' in the way that best comports with the Congress's expressed objective ''to provide for a pro-competitive, de-regulatory national policy framework'' for the ''rapid[ ] private sector deployment of advanced telecommunications and information technologies.'' [97] Currently, a wireline LEC's study area generally includes all the territory of a single state within which that carrier operates. We ask that interested parties propose an appropriate basis for defining the ''service area'' of a ''rural telephone company,'' taking into account the likely possible effect on competition of a ''service area'' definition for rural telephone companies. In conjunction with this issue, we request comment on whether we should amend our rules to revise existing study area boundaries. In the context of implementing a ''pro-competitive, de-regulatory national policy framework,'' [98] as required by the 1996 Act, we ask that the Joint Board prepare recommendations regarding the appropriate ''service area'' boundaries of areas served by a ''rural telephone company.''

46. The Act also requires ''eligible telecommunications carrier[s]'' to ''advertise the availability of such services and the charges therefore using media of general distribution.'' [99] The Joint Explanatory Statement adds that ''such services must be advertised generally throughout'' the service area.[100] To avoid future disputes, we believe it may be useful for us to adopt guidelines defining the steps that would be sufficient to advertise the availability of, and charges for, services. We ask interested persons to comment on this approach and suggest appropriate guidelines.

47. Section 214(e)(3) permits any unserved community—an area or a portion of a defined service area in which ''no common carrier will provide the services that are supported by Federal universal service support mechanisms''—to request the Commission (for interstate services) and State commission (for intrastate services) to designate an eligible telecommunications carrier.[101] Upon such request, the Commission or State commission shall order a common carrier or carriers to provide service to the requesting community.[102] Pursuant to Section 214(e)(3) of the 1996 Act, such carriers shall be designated as an eligible telecommunications carrier. We ask commenters to address how we should implement our responsibilities under Section 214(e)(3), and whether we and the State commissioners should develop a cooperative program to ensure that all areas receive each of the services supported by Federal universal service support mechanisms.

48. Section 214(e)(4) provides procedures for a carrier to relinquish its designation as an eligible telecommunications carrier. States must permit this to occur if the requesting carrier gives advance notice to the State and if there is more than one eligible telecommunications carrier serving the area. The State commission must require the remaining telecommunications carrier or carriers in the area to ensure that all of the relinquishing carrier's customers will continue to be served. The State commission must also require sufficient notice to permit the purchase or construction of adequate facilities by any remaining telecommunications carrier. Section 214(e)(4) requires that the State commission must establish a time, not to exceed one year from the date of approval of relinquishment, for the purchase or construction of adequate facilities.[103]

49. Section 214(e)(2) and (e)(4) reserve consideration of requests for relinquishment of the designation of eligible telecommunications carriers to the States.[104] We must amend any of our regulations that would be inconsistent with that reservation, and we invite commenters to identify any such regulations.[105] We refer these issues, and all of the issues raised above with respect to support for rural and high-cost areas, to the Joint Board for its recommendation.

C. Support for Low-Income Consumers

1. What Services To Support

50. In Part III.B.1 of this Notice, *supra*, we discuss the services that may be included among the services to consumers in rural, insular, and high-cost areas that should receive support.[106] We propose that these services should also be services supported by Federal universal service support mechanisms with respect to low-income consumers. In this part of our Notice, we seek comment on whether designation of additional services that would be specifically appropriate for low-income users. We note that the Joint Explanatory Statement added persons with low-income ''to the list of consumers to whom access to telecommunications and information services should be provided.'' [107] Through the Commission's monitoring of subscribership levels and census data, we know that subscribership levels for low-income individuals fall substantially below the national average.[108] We request comment regarding the Commission's overall responsibilities under Sections 1 and 254 with regard to low-income consumers. We invite the commenters to address whether there are any particular services, technical capabilities, or features that would be of benefit to low-income consumers and that meet one or more of the criteria for inclusion among the services that should receive universal service support. Consistent with the Act's

Commission's Rules and Establishment of a Joint Board, Decision and Order, 50 FR 939 (1985) (1985 Lifeline Order) (adopting, with minor modifications the Joint Board recommendations issued in MTS and WATS Market Structure; Amendment of the Commission's Rules and Establishment of a Joint Board, Recommended Decision and Order, 49 FR 28325 (1984)) (1984 Recommended Decision).

[95] 1996 Act sec. 102(a), § 214(e)(5).

[96] *Id*. § 153(47).

[97] See S. Conf. Rep. No. 104–230, 104th Cong., 2d Sess. 1 (1996).

[98] *Id*.

[99] 1996 Act sec. 102(a), § 214(e)(1)(B).

[100] *See* S. Conf. Rep. No. 104–230, 104th Cong., 2d Sess. 141 (1996).

[101] 1996 Act sec. 102(a), § 214(e)(3).

[102] *Id*.

[103] *Id*. § 214(e)(4).

[104] *Id*. § 214(e)(2), (4).

[105] *Id*. § 254(a).

[106] *Id*. § 254(b)(3).

[107] S. Conf. Rep. No. 104–230, 104th Cong., 2d Sess. 131 (1996).

[108] See Subscribership Notice at 13003–4.

principle that support mechanisms should be ''specific, predictable, and sufficient,'' [109] we ask commenters to address potential costs associated with such support. We request a recommendation from the Federal-State Joint Board convened in this proceeding regarding all of the matters discussed in this part of the Notice.

51. *Free Access to Telephone Service Information.* In an Interim Opinion regarding universal service,[110] the California Public Utilities Commission tentatively concluded that free telephone access by subscribers to the telephone company central office, for purposes such as reporting the need for repairs and inquiring about bills or eligibility for special programs, is an essential telephone service.[111] Such free telephone access to the telephone company central office would be of primary significance for measured rate subscribers, who are charged for each local call they make on either a per call or per minute basis, because subscribers with flat rate local service generally may make routine service inquiries without incurring extra charges.

52. Many measured rate subscribers choose that service as a less expensive alternative to the flat rate, and thus would be expected to be especially sensitive to charges for service inquiries. Similarly, it appears likely that potential Lifeline and Link Up customers could benefit significantly from free access to information regarding those subsidy programs.[112] Indeed, such access may be needed to if we are to fulfill our statutory mandate to ensure that universal service is available at affordable rates.[113]

53. We seek comment on whether free access to the telephone service provider for low-income customers should be included within the group of services receiving universal service support, in order to allow those customers to receive information about telephone service activation, termination, repair, and information regarding subsidy programs.[114] Because access by subscribers to certain basic information concerning their telephone service may be a prerequisite to maintaining their service, we seek comment on whether, like access to the loop itself, access to that information is essential to public health and safety and is otherwise consistent with the public interest, convenience, and necessity.[115] Commenters should also address the applicability of the criteria set forth in both Sections 254(c)(1)(B) and (C) to this service. We invite interested parties to provide information regarding the current availability of free access to information regarding telephone service activation and termination, repairs, and telephone subsidy programs.

54. *Toll Limitation Services.* In discussing toll limitation services, we consider both toll blocking and toll control services. Some LECs offer a service that limits only long-distance calls for which the subscribers would be charged (a form of toll blocking) or limits the toll charges a subscriber can incur during a billing period (a toll call control service). To the extent that toll blocking or limiting services allow low-income customers to avoid involuntary termination of their access to telecommunications services, we seek comment on whether such services are ''essential to education, public health, or public safety'' and ''consistent with the public interest, convenience, and necessity.'' [116] Moreover, many LECs apparently offer toll limiting services to their subscribers at tariffed rates,[117] indicating that toll limiting service is ''being deployed in public telecommunications networks by telecommunications carriers.'' [118] We seek comment regarding the remaining criterion for including services in the definition of ''universal service,'' the issue of whether toll limiting has, ''through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers.'' [119] We seek comment on whether, where such services are available, they should be offered to low-income subscribers without charge or at a discount and what criteria we should use to determine the support for which a carrier offering such services would be eligible.[120]

55. We recognize that various methods may exist to advance Section 254(b)(3)'s statutory principle that the Commission ensure that ''low-income consumers * * * have access to * * * interexchange services.'' [121] We also note that, in the context of the Commission's regulation of the interstate interexchange marketplace, one interexchange carrier has voluntarily committed to institute an optional calling plan for low-income consumers in order to mitigate the impact of recent increases in basic schedule interstate long-distance rates in the marketplace.[122] For example, under the calling plan, low-income residential customers can place one hour of interstate direct dial service, during a one-month period, at a rate frozen at 15 percent below current basic schedule rates.[123] We solicit comment on whether and how we should encourage domestic interstate interexchange carriers to provide optional calling plans for low-income consumers to promote the statutory principles enumerated in Section 254(b)(3). We also seek comment on the potential impact of such plans upon subscribership to telecommunications services.

56. *Reduced Service Deposit.* Recent studies indicate that disconnection for non-payment of toll charges, and the high deposits carriers charge to cover the cost of noncollectible charges, may be more significant barriers to universal service than the cost of local service itself.[124] In our Subscribership Notice, we noted that LECs generally require deposits before connecting subscribers, and that, for many low-income subscribers, these deposits present a formidable obstacle to initiating service.[125] The availability of affordable toll limiting service, along with the lower deposits carriers would impose on customers who have limited the toll charges they can incur, appears likely to determine whether many low-income consumers have ''affordable'' access to any public telecommunications services.[126] Moreover, some states which require affordable voluntary toll limiting service have subscribership rates that are above the national average, suggesting that the means to control toll usage is an important component of

[109] 1996 Act sec. 101(a), § 254(b)(5).

[110] Rulemaking on the Commission's Own Motion into Universal Service and to Comply with the Mandates of Assembly Bill 3643, R.95–01–020; and Investigation on the Commission's Own Motion into Universal Service and to Comply with the Mandates of Assembly Bill 3643, I.95–01–020, *Interim Opinion* (Cal. Pub. Utils. Comm'n, filed Jan. 24, 1995) (*CPUC Interim Opinion*).

[111] *Id.* at 18.

[112] We describe those programs in part III.C.2., *infra*.

[113] 1996 Act sec. 101(a), § 254(i).

[114] *Id.* § 254(c)(1)(B), (C).

[115] *See id.* § 254(c)(1)(A), (D).

[116] *Id.*

[117] For example, the Bell Atlantic Telephone Companies offer voluntary toll restriction services in Maryland, the District of Columbia and Pennsylvania; Pacific Bell offers voluntary toll restriction service in California.

[118] 1996 Act sec. 101(a), § 254(c)(1)(C).

[119] *Id.* § 254(c)(1)(B).

[120] We recognize that there is potential tension between affording consumers the ability to receive toll limitation services and the principle set forth in the Act that consumers should have access to ''telecommunications and information services, including interexchange services.'' 1996 Act sec. 101(a), § 254(b)(3).

[121] *Id.*

[122] Motion of AT&T Corp. to be Reclassified as a Non-dominant Carrier, FCC 95–427 (rel. Oct. 23, 1995).

[123] *Id.* at para. 84.

[124] Subscribership Notice at 13005–06.

[125] *Id.* at 13003–05.

[126] 1996 Act sec. 101(a), § 254(i).

universal service, particularly for low-income households. We ask interested parties to present a reasoned analysis of whether, based on consideration of all four criteria in Section 254(c)(1), we should require discounted toll limiting service and reduced deposits for low-income consumers, and we request that the Federal-State Joint Board present recommendations on this proposal.

57. *Services Other Than Conventional Residential Services.* In the past, the Commission's universal service policies focused on the cost of traditional residential service. Nevertheless, we recognize that some individuals with low incomes do not have access to residential service.[127] For some individuals who move frequently or have no residence, access to conventional residential telecommunications service may not be practical. We therefore seek comment on specific services which may enable such low-income customers to gain access to the telecommunications network. We seek comment from parties to identify any historically underserved segments of the population and potential services and features [128] that the Joint Board may consider in addressing the provision of telecommunications services to these highly mobile groups. To determine whether these services should be included in our list of supported services, we seek comment on: whether these services are essential to the public health and public safety; whether a substantial majority of residential customers have subscribed to the services; the extent to which telecommunications carriers deploy, or plan to deploy, them in public networks; and, generally, how offering these service as part of universal service is consistent with the public interest, convenience, and necessity.[129] We also seek comment on how best to measure the extent to which low-income populations that are unable to maintain traditional residential service have access to facilities for making and receiving calls. We invite parties to address the potential for provision of these services by wireless carriers.

58. *Other Services For Low-Income Subscribers.* We seek comment on whether there are other services that, with respect to low-income consumers, should be included in universal service support mechanisms. We note that low-income subscribers have significantly lower telephone subscribership rates than other subscribers,[130] and seek comment on the reasons underlying this disparity. Any commenter proposing inclusion of an additional service within the definition of services to be supported by federal universal service support mechanisms should discuss the extent to which the proposed service meets each of the criteria enumerated in Section 254(c)(1), and how inclusion of the proposed service would promote access by low-income consumers to telecommunications and information services.

2. How To Implement and Who Is Eligible for Support

59. *New Support Mechanisms.* We generally seek comment on how to determine the subsidy that would be necessary to make the services identified as the ''core services'' eligible for universal service support available to low-income consumers. We pose the same question with respect to any additional services specifically targeted to low-income users discussed above. As a threshold matter, we seek comment and a Joint Board recommendation on how to define eligible low-income customers. We seek comment on whether we should require a discount on all supported services and the amount of that discount. Parties endorsing specific services for low-income users, such as free toll limitation services, should propose specific mechanisms to define and distribute support for those offerings. For example, parties asserting that the support should be cost-based should describe how those costs should be determined. We intend to implement Section 254(k) consistent with the expressed Congressional intent ''to provide for a pro-competitive, de-regulatory national policy framework.'' [131] We therefore seek comment on support methodologies involving the least regulatory methods.

60. We seek specific comment on how our proposed support mechanisms should apply to the services discussed in this part of our Notice. We are particularly interested in comment on how support should be calculated and paid if the provider of the service is not the local telephone company. We ask the Joint Board to address these issues in its recommended decision.

61. *Existing Support Mechanisms.* Currently we have two support mechanisms targeted to low-income consumers: the Lifeline Assistance Plan and Link Up America. States may choose to participate in either of two Lifeline Assistance plans. Plan 1 provides for a reduction in a subscriber's monthly telephone bill equal to the $3.50 federal subscriber line charge (SLC) for residential subscribers.[132] Half of the reduction comes from a 50 percent waiver of the charge; the other half comes from the participating state, which matches the federal contribution by an equal reduction in the local rate. Under this plan, subscribers who satisfy a state-determined means test may receive assistance for a single telephone line in their principal residence. Of the 38 states and territories participating in Lifeline, only California still offers a Lifeline program under Plan 1.[133]

62. Under Plan 2, which expands Plan 1 to provide for waiver of the entire residential SLC (up to the amount matched by the state), a subscriber's bill may be reduced by twice the SLC (or more, if the state more than matches the value of the federal waiver).[134] The state contribution may come from any intrastate source, including state assistance for basic local telephone service, connection charges, or customer deposit requirements. Companies in 37 states or territories reported subscribers receiving Plan 2 Lifeline assistance as of April 1995.[135] In 1994, about 4.4 million households received $123 million in federal Lifeline assistance through full or partial waiver of the SLC.[136] Under both plans, the interstate portion of Lifeline Assistance is billed to interexchange carriers by the National Exchange Carrier Association, Inc. (NECA).

63. The 1996 Act states that ''[n]othing in this section shall affect the

[127] Seasonal workers and homeless individuals, for example, are unlikely to subscribe to residential telephone service.

[128] For example, these may include services like community phone banks, availability of public interest payphones, community access centers, special discounted service plans for short-term subscribers, or low-cost voice mailboxes, which may provide a viable alternative for providing telecommunications service to the highly mobile populations. We note that we will not address public interest payphones in this proceeding because they will be addressed in a separate proceeding, as required under Section 276(b)(2) of the 1996 Act. See 1996 Act sec. 151(a), § 276(b)(2).

[129] 1996 Act sec. 101(a), §§ 254(c)(1) (A)–(D).

[130] For example, according to Census Bureau statistics, 98 percent of households with annual income above $30,000—the median income—have a telephone in the home, while only 84 percent of households with annual income under $12,000—the poverty level for a family of three—have a telephone in the home.

[131] S. Conf. Rep. No. 104–230, 104th Cong., 2d Sess. 1 (1996).

[132] *1985 Lifeline Order.*

[133] Indus. Analysis Div., FCC, *Monitoring Report May 1995 CC Docket No. 87–339,* at tbl. 2.1 (1995) (*Monitoring Report*).

[134] MTS and WATS Market Structure; Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, *Decision and Order,* 51 FR 1371, paras. 4–6 (1986).

[135] Monitoring Report, tbl. 2.3.

[136] *Id.*

collection, distribution, or administration of the Lifeline Assistance Program provided for by the Commission under regulations set forth in section 69.117 of title 47, Code of Federal Regulations, and other related sections of such title.'' [137] Section 69.117 addresses the conditions and mechanisms for waiver of subscriber line charges.[138]

64. The Link Up program helps low-income subscribers begin telephone service by paying half of the first $60 of connection charges.[139] Where a LEC has a deferred payment plan, Link Up will also pay the interest on any balance up to $200, for up to one year.[140] To be eligible, subscribers must meet a state-established means test, and may not, unless over 60 years old, be a dependent for federal income tax purposes.[141] Link Up is available in all but two states (California and Delaware) and in the District of Columbia.[142] The 1996 Act does not directly address our rules relating to the Link Up program. Nonetheless, like the universal service fund, the Link Up support is a function of jurisdictional separations.[143] The Link Up program's support comes, in part, through shifting LEC costs that would otherwise be recovered through rates for intrastate services to the interstate jurisdiction. Consistent with the Act's requirement that support mechanisms be explicit, propose to amend our rules to remove the Link Up provisions from our jurisdictional separations rules. We further propose that the support mechanism for Link Up be the same as that developed to support other services that receive Federal universal service support.

65. We also seek comment on whether changes to the level of support or other changes to our Lifeline and Link Up programs should be made as part of an overall mechanism to ensure that quality services are available at just, reasonable, and affordable rates for low-income subscribers. Interested parties may, however, propose changes to the level of support. Parties suggesting changes to the level of support should provide evidence of the need for such changes and should address how the proposed changes further the principle of universal service as stated in the 1996 Act, and should identify the effect of their suggested change on the level of subsidy required to fund these programs.

D. Ensuring That Supported Services for Rural, Insular, and High-Cost Areas and Low-Income Consumers Evolve

66. The 1996 Act states that ''[u]niversal service is an evolving level of ____ telecommunications services'' and requires that the Commission periodically establish the definition, ''taking into account advances in telecommunications and information technologies and services.'' [144] Thus, our list of services receiving universal service support should continue to evolve, as changes in technology and subscriber needs and preferences affect both the availability and subscribership patterns of various telecommunications services. That evolution should, however, be achieved in the context of regulatory objectives that include promoting competition and reducing regulation in a manner that is technology-neutral.[145] We, therefore, seek comment on how and with what frequency we should evaluate our initial list of services adopted in this proceeding in accordance with the Congressional recognition that universal service is an evolving level of telecommunications services.

67. Parties in a California Public Utilities Commission proceeding have suggested that any universal service definition should be revisited at fixed intervals, such as every three or five years.[146] Whether we decide to revisit the topic even sooner depends on the information we collect in the proceeding on advanced services mandated in Section 706 of the Act.[147] Moreover, although periodic review could help to ensure that the definition does not remain static, it could also entail the expenditure of resources on unnecessary proceedings. To apply the definitional criteria that Congress has set forth in Section 254(c)(1), we shall need to gather relevant facts, including the extent to which particular services ''are being deployed in public telecommunications networks'' and ''have been subscribed to * * * by a substantial majority of residential customers.'' [148] At the same time, we fully recognize that it could be unduly burdensome to impose extensive information collection requirements relating to those criteria. Since the list of services that should receive universal service support is partially defined by consideration of what services are widely subscribed to by residential customers,[149] it may be that we can rely on the marketplace to register its preferences without soliciting those preferences indirectly through burdensome data collection activities. We propose, instead, to rely on information sources that already exist, and to initiate additional information collection efforts only if that information proves inadequate and only when we contemplate changes in the list of services that should receive universal service support. Should it appear advisable to collect additional information, we would first conduct a cost/benefit analysis to ensure that the burden of collection would not outweigh the value of the information we would request. We seek comment on this proposal and, in addition, we ask that interested parties identify specific sources of information relevant to this list of services in accordance with the criteria set forth in Section 254(c)(1), including information sources available at State commissions and procedures for obtaining such information.

68. The 1996 Act also states that ''[q]uality services should be available at just, reasonable, and affordable rates.'' [150] As to the technical parameters of specific telecommunications services, we do not intend, in implementing Section 254, to prescribe technical standards for telecommunications carriers or other service providers. This Commission, historically, has let affected entities (IXCs, LECs, equipment manufacturers, and customers) develop technical standards and performance standards,[151] and implement those standards without our direct intervention, except as necessary. At present, there are several industry bodies that address standards for various aspects of communications networks.[152] Our preference, in implementing section 254, is to

[137] 1996 Act sec. 101(a), § 254(j).

[138] See 47 CFR 69.117.

[139] MTS and WATS Market Structure; Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, *Report and Order*, 2 FCC Rcd 2953, 2955, (1987) (*1987 Report and Order*); MTS and WATS Market Structure Link-Up America, and Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, *Decision and Order*, 4 FCC Rcd 3634 (1989).

[140] 1987 Report and Order at 2955.

[141] *Id.* at 2956.

[142] Monitoring Report, tbl. 2.2.

[143] See 47 CFR 36.711–741.

[144] 1996 Act sec. 101(a), 254(c)(1).

[145] *Id.*

[146] *CPUC Interim Opinion* at 20.

[147] 1996 Act sec. 706, § 706(b). Section 706 requires the Commission to ''initiate a notice of inquiry concerning the availability of advanced telecommunications to all Americans (including, in particular, elementary and secondary schools and classrooms) * * *.''

[148] *Id.* § 254(c)(1)(B)–(C).

[149] See *id.* § 254(c)(1)(B).

[150] *Id.* § 254(b)(1) (emphasis added).

[151] For example, a ''technical standard'' would apply to the electrical and signaling parameters at the interface between carriers. A ''performance standard'' would apply to the speed, accuracy, dependability, availability, and survivability of the transmission/switching path.

[152] Those include the American National Standards Institute Committee T–1, Electronic Industry Association, and Telecommunications Industry Association.

encourage existing standard-setting bodies to discuss and establish relevant technical standards.

69. The 1996 Act requires the Commission to ensure that ''[c]onsumers in all regions of the Nation, * * * have access to telecommunications and information services * * * that are reasonably comparable to those services provided in urban areas.'' [153] As stated above, the 1996 Act also requires that the Commission ensure that ''[q]uality services should be available.'' [154] We seek comment on whether it would be useful to collect and publish certain basic information regarding technical performance levels of carriers subject to our jurisdiction. Information on service quality that would enable comparisons between the performance levels of various telecommunications carriers would potentially create a market-based incentive for carriers to provide quality services. By providing consumers with easy access to publicly available data on the performance level of various carriers, we could potentially spur carriers to compete for customers, among other things, on the basis of service quality in an increasingly competitive telecommunications marketplace.[155] We note, however, that because competition will probably not develop in a uniform fashion throughout the Nation, we seek comment on whether it may be necessary to obtain data that could be used by the public, regulators, and regulated entities, to monitor service quality performance from carriers, particularly those serving in rural areas, that are not currently subject to our existing service quality monitoring program.[156] In proposing to collect and publish this information, we wish to impose the least possible cost on the companies involved. We, therefore, solicit comment on whether industry organizations or State commissions already collect the information that should be contained in these performance reports, and whether it would be reasonable to rely upon such information rather than extending our existing requirements to all carriers. We also ask that the commenters attempt to estimate the potential costs associated with these alternatives, in accordance with the principles stated in Section 254(b)(5) that support mechanisms should be ''specific, predictable, and sufficient.'' [157]

70. Finally, we recognize that such reports may not, in the near future, be necessary for many urban and suburban areas, as local service competition develops and the technical characteristics of competitors' respective services are determined in response to market demands. We therefore ask whether we should take action at some fixed date to evaluate the need for continuing the performance reports, covering services offered to all or some areas of the nation. We request that the Joint Board prepare a recommended decision addressing all of the issues raised in this Notice with respect to monitoring of telecommunications services.

IV. Schools, Libraries, and Health Care Providers

A. Goals and Principles

71. Among the seven universal service principles established in the 1996 Act is the principle that ''elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services.'' [158] The Act allows the Commission to designate additional, special services for universal service support for eligible schools, libraries and health care providers.[159] In this section we propose to implement Sections 254(c)(3) (allowing the Commission to designate additional services for such support mechanisms for schools, libraries, and health care providers) and 254(h)(1) (providing guidance on rates and discounts for rural health care providers and educational providers and libraries). As to Section (h)(1), we discuss and seek comment on what services, in addition to the core services discussed in Section III, should be made available to schools, libraries and rural health care providers at a discount.[160] We also seek comment on issues relating to the implementation of Section 254(h)(1) relating to support mechanisms that would enable eligible schools, libraries, and rural health care providers to receive both the core and advanced telecommunications services included among those eligible for universal service support.[161]

72. Access to telecommunications services is important to schools, classrooms, libraries and rural health care providers for a number of reasons. Congress explicitly recognized the importance of telecommunications to these educational institutions and rural health care providers in enacting this legislation:

> The ability of K–12 [kindergarten to 12th grade] classrooms, libraries and rural health care providers to obtain access to advanced telecommunications services is critical to ensuring that these services are available on a universal basis. The provisions of subsection (h) will help open new worlds of knowledge, learning and education to all Americans rich and poor, rural and urban. They are intended, for example, to provide the ability to browse library collections, review the collections of museums, or find new information on the treatment of illness, to Americans everywhere via schools and libraries. This universal access will assure that no one is barred from benefiting from the power of the Information Age.[162]

Modern two-way, interactive capabilities will not only enable users at schools, libraries and rural health care facilities to access information, but also give students the ability to participate in educational activities at other schools, including universities; allow students, teachers, librarians and rural health care providers to consult with colleagues or experts at other institutions; may allow parents to participate more easily in their children's education by communicating with the school's telecommunications system; and may facilitate the transmission of data for the practice of telemedicine. Finally, as advanced telecommunications services become ubiquitous, technological literacy will become even more important to our economy. Exposure to telecommunications services for our nation's school children will provide them with skills needed for jobs in a technologically advanced society.

73. In this section, we focus on three tasks that are essential to the implementation of the provisions of the 1996 Act discussed in the foregoing paragraph. First, we seek to identify the

[153] 1996 Act sec. 101(a), § 254(b)(3).

[154] *Id.* § 254(b)(1).

[155] Airline on-time information is published in ''Air Travel Consumer Report,''Aviation Consumer Protection Div., Dep't of Transp. (issued monthly).

[156] *See* 47 CFR 43.21–22. Information reported by LECs includes, *inter alia*, service installation and repair intervals, trunk blockage rates and switch outage information. These are reported on Automated Reporting and Management Information System (ARMIS) Report Nos. 43–05, 43–06 and 43–07.

[157] 1996 Act sec. 101(a), § 254(b)(5).

[158] *Id.* § 254(b)(6).

[159] Id. § 254(c)(3). We note that Section 254(h)(4) denies eligibility for discounts to any school or library that ''operates as a for-profit business.'' *Id.* § 254(h)(4). In addition, the discounts are not available to any elementary and secondary school having an ''endowment of more than $50,000,000'' or library that is ''not eligible for participation in State-based'' applications for library services and technology funds under Title III of the Library Services and Construction Act. *Id.* § 254(h)(A). See further discussion *infra* at part V.B.3.

[160] 1996 Act § 254(h)(1).

[161] We note that the statutory scheme of Section 254 distinguishes between eligible health care providers generally and rural health care providers. The support mechanisms created by Section 254(h)(1) would extend only to rural health care providers. Section 254(h)(2), which we discuss in part V., embraces all eligible health care providers as defined in Section 254(h)(5)(B) and not just those operating in rural areas.

[162] S. Conf. Rep. No. 104–230, 104th Cong., 2d Sess. 132–33 (1996).

services to be supported by federal universal service support mechanisms for schools, libraries and rural health care providers.[163] For schools and libraries, the Act requires that services provided by telecommunications carriers receiving universal service support be ''for educational purposes.'' [164] For rural health care providers, services provided by telecommunications carriers supported by universal service support mechanisms must be those that are ''necessary for the provision of health care services in a State.'' [165]

74. Next, we consider ways to implement the support mechanisms for schools, libraries and rural health care providers. For schools and libraries, we seek comment on how to formulate discount methodologies that ensure that each discount is ''an amount that * * * is appropriate and necessary to ensure affordable access to and use of such services by such entities.'' [166] For rural health care providers, this task includes, inter alia, determination of the method to be used by each carrier in calculating the ''amount equal to the difference, if any, between the rates for services provided to health care providers for rural areas in a State and the rates for similar services provided to other customers in comparable rural areas in that State,'' for purposes of defining the offset or reimbursement due the carrier under our universal service support rules.[167]

75. We also seek to determine the terms and conditions for the provision of interstate support to telecommunications carriers serving schools and libraries and rural health care providers. We discuss the identification of the health care providers that serve ''persons who reside in rural areas,'' and, correspondingly, the ''urban areas in that State.'' [168] Finally, we discuss which telecommunications carriers may receive universal support pursuant to Section 254.

76. In addition to seeking comment on the approach to the implementation of Section 254(h)(1)(A) discussed below, we seek comment on additional measures that may be necessary to implement this section. We also refer all these issues to the Joint Board for its recommendation.

B. Schools and Libraries

1. What Services To Support

77. Section 254(h)(1)(B) of the Act states:

> All telecommunications carriers serving a geographic area shall, upon bona fide request for any of its services that are within the definition of universal service under subsection (c)(3), provide such services to elementary schools, secondary schools, and libraries for educational purposes at rates less than the amounts charged for similar services to other parties. The discount shall be an amount that the Commission, with respect to interstate services, and the States, with respect to intrastate services, determine is appropriate and necessary to ensure affordable access to and use of such services by such entities.

Section 254(c)(3), in turn, states that ''[i]n addition to the services included in the definition of universal service under paragraph (1), the Commission may designate additional services for such support mechanisms for schools [and] libraries * * * for the purposes of subsection (h).'' We propose that the set of services designated for federal universal service support pursuant to Section 254(c)(1) and any other services designated for support pursuant to Section 254(c)(3) be made available to schools and libraries pursuant to the discount to be considered in this proceeding.

78. We seek comment and Joint Board recommendation on the additional services that carriers must make available to schools and libraries under Section 254(h)(1)(B). As the legislative history makes clear, Congress ''expect[ed] the Commission and the Joint Board to take into account the particular needs of * * * K–12 [kindergarten to 12th grade] schools and libraries'' in determining which services should be provided at a discount.[169]

79. A February 1996 study, Advanced Telecommunications in U.S. Public Elementary and Secondary Schools, 1995, commissioned by the National Center for Education Statistics, part of the United States Department of Education, observes that these services are not yet widely available in classrooms. Only 9 percent of all instructional rooms (classrooms, labs, and library media centers) are currently connected to the Internet.[170] Schools with large proportions of students from poor families are half as likely to provide Internet access as schools with small proportions of such students.[171] Funding and inadequate telecommunications links were the most frequently cited barriers to acquiring or using advanced telecommunications services in public schools.[172]

80. In determining which telecommunications services to support through universal service mechanisms, our goal is to help elementary and secondary schools and classrooms and libraries to have access to advanced telecommunications services [173] and to help minimize the barriers which exist to provision of telecommunications services to schools and libraries. We seek comment on what functionalities should be supported through universal service mechanisms for schools and libraries and what facilities are required to provide those functionalities.[174] In this regard, we seek guidance on how to determine which services will be provided to schools and libraries at a discount pursuant to Section 254(h)(1)(B), without prescribing a specific technical standard for each funded service. We also seek comment on how we should define ''geographic area'' for purposes of Section 254(h)(1)(B).

81. In addition, we seek comment on whether wireless technologies may provide a more efficient way of delivering any of the services designated for support. Finally, we also invite comment on how our special definition of services for schools and libraries should reflect future ''advances in telecommunications and information

[163] 1996 Act sec. 101(a), §§ 254(h)(1) & 254(C)(3).

[164] 1996 Act sec. 101(a), § 254(h)(1)(B).

[165] Id. § 254(h)(1)(A).

[166] Id. § 254(h)(1)(B).

[167] Id. § 254(h)(1)(A).

[168] Id.

[169] S. Conf. Rep. No. 104–230, 104th Cong., 2d Sess. 133 (1996).

[170] National Ctr. for Educ. Statistics, U.S. Dep't of Educ., Advanced Telecommunications in U.S. Public Elementary and Secondary Schools 1995, (Feb. 1996).

[171] *Id.*

[172] *Id.* at 3. In the survey instrument used for the study, public schools were asked which services they now make available to their students, including: (1) Computers connected to a local area network; (2) computers with connection or access to a wide area network; and (3) computers connected to the Internet. With respect to Internet access, the survey asked which Internet resources or capabilities a school has access to, including: (1) Electronic-mail; (2) news groups; (3) resource locations services; and (4) World Wide Web access. *Id.* at app. G.

[173] 1996 Act sec. 101(a), § 254(b)(6).

[174] For example, we note that many of the basic voice grade loops that would be available to schools and libraries at discounted prices as part of the basic package of services would permit them to connect to the Internet at the full 28.8 kilobyte per second (kbps) speed of the current fastest popular computer modems. If schools and libraries find it important to have instantaneous transmissions or to handle multiple connections simultaneously, they are likely to require higher capacity, higher speed links. Schools that desire video links to permit teleconferencing will generally find 1.5 Mbps T1 links quite adequate for the ''talking head'' lecture style of presentations that most teachers present. Yet others may note that to provide high-quality full-motion video in real time today may require a 45 Mbps DS3 link. Technical Personnel Bellcore and Bell Operating Companies, Telecommunications Transmission Engineering 363 (1990).

technologies and services.'' [175] We seek comment and Joint Board recommendation on all of these issues.

2. How To Implement

a. Establishment of the Interstate Discount for Schools and Libraries.

82. As discussed above,[176] we interpret Section 254(h)(1)(B) of the new Act to entitle schools and libraries to receive discounts on all services falling either within our list of services under Section 254(c)(1) that should receive universal service support, or our list of services for schools and libraries under Section 254(c)(3). Each discount must produce a ''rate[] less than the amounts charged for similar services to other parties'' and be ''an amount that * * * is appropriate and necessary to ensure affordable access to and use of such services by such entities.'' [177] The 1996 Act gives the Commission the responsibility to establish the discounts on interstate services, while the States are charged with establishing the discounts on intrastate universal services.[178]

83. We seek comment and Joint Board recommendation on the factors to be used in formulating a discount methodology for universal service support for schools and libraries. The methodology could reflect whether the services used are tariffed or whether the charges are for capital investments or recurring expenses. The methodology could also be based on the incremental costs of providing services rather than retail prices. We also seek comment on the estimated costs associated with each discount methodology, and how each methodology would comport with the Act's principle of providing ''specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.'' [179] Overall, we seek comment and a Joint Board recommendation on how the respective State and Federal discount methodologies can be harmonized to ensure that we fulfill Congress's goal that, throughout the nation, elementary and secondary schools, classrooms and libraries have access to advanced telecommunications services.

b. Terms and Conditions of Interstate Support for Telecommunications Carriers Providing Discounted Universal Services to Schools and Libraries.

84. Section 254(h)(1)(B) specifies that schools and libraries are entitled to a discount on telecommunications services only if the requested services will be used ''for educational purposes.'' [180] We invite comment on what steps we should take to ensure that this requirement is met. One possible approach would be to have the school or library provide the carrier with a written certification that the requested services will be used for educational purposes and will not be ''sold, resold, or otherwise transferred by such user in consideration for money or any other thing of value.'' [181] We invite comment and Joint Board recommendation on this proposal. To ensure that schools and libraries have a meaningful opportunity to benefit from the discounts, we propose to require each carrier to inform annually each school and library within its geographic serving area of the available discounts.

85. Under the 1996 Act, each ''telecommunications carrier[] serving a geographic area shall, upon bona fide request for any of its services that are within the definition of universal service'' provide such service to schools and libraries ''for educational purposes.'' [182] We propose that any person qualified under State or local law to order telecommunications services for schools or libraries be deemed capable of making a ''bona fide request'' for service. We ask for comment and Joint Board recommendation on how to determine with as much precision as possible whether such a request is ''bona fide.''

86. The Act instructs that ''telecommunications services and network capacity'' provided to schools and libraries through universal service support mechanisms ''may not be sold, resold, or otherwise transferred by such user in consideration for money or any other thing of value.'' [183] We ask commenters and the Joint Board to address whether this provision will affect the ability of schools and libraries to receive universal service support if they are sharing a network with parties who are not eligible to receive support and what mechanisms could ensure that this provision does not discourage partnerships between schools and libraries and their communities.

3. Who Is Eligible for Support

87. The term ''elementary and secondary schools'' is defined for purposes of Section 254 by reference to the definition found in the Elementary and Secondary Education Act of 1965.[184] The term ''elementary school'' is defined there to be ''a nonprofit institutional day or residential school that provides elementary education, as determined under State law.'' [185] The term secondary school means ''a nonprofit institutional day or residential school that provides secondary education, as determined under State law, except that such term does not include any education beyond grade 12.'' [186] Consortia of educational institutions providing distance learning to elementary and secondary schools are considered as educational providers eligible for universal service support.[187] Section 254(h)(4) denies eligibility for discounts to any school or library that ''operates as a for-profit business.'' In addition, the discounts are not available to any elementary and secondary school having an ''endowment of more than $50,000,000'' or library that is ''not eligible for participation in State-based'' applications for library services and technology funds under Title III of the Library Services and Construction Act.[188] To help ensure that these conditions are met, we propose to require that any certification address these eligibility requirements.

88. Each telecommunications carrier providing discounted service to schools and libraries is permitted either to have ''the discount treated as an offset to its obligation to contribute to the mechanisms to preserve and advance universal service'' or ''receive reimbursement utilizing the support mechanisms to preserve and advance universal service.'' [189] Unlike all other universal service support, which is to be restricted to ''eligible telecommunications carriers'' under the terms of Section 214(e) of the Act,[190] the offset or reimbursement provided under Section 254(h)(1)(B), pertaining to schools and libraries, must be given to ''all telecommunications carriers serving a geographic area.'' We ask for comment and Joint Board recommendation on how to implement these provisions. Section 254(h)(1)(B) specifies that all discounts shall apply to ''the amounts charged for similar services to other parties.'' [191] We invite comment and Joint Board recommendation on how we might determine those amounts.

[175] 1996 Act sec. 101(a), § 254(c)(1).

[176] *See* Section V.B.1., *supra.*

[177] 1996 Act sec. 101(a), § 254(h)(1)(B).

[178] *Id.*

[179] *Id.* § 254(b)(5).

[180] *Id.* § 254(h)(1)(B).

[181] *Id.* § 254(h)(3).

[182] *Id.* § 254(h)(1)(B).

[183] *Id.* § 254(h)(3).

[184] *Id.* 254(h)(5)(A).

[185] 20 U.S.C. 8801(14).

[186] *Id.* 8801(25).

[187] S. Conf. Rep. No. 104–230, 104th Cong., 2d Sess. 134 (1996).

[188] 1996 Act sec. 101(a), § 254(h)(4); see also 20 U.S.C. 353.

[189] 1996 Act sec. 101(a), § 254(h)(1)(B).

[190] *Id.* 214(e).

[191] *Id.* § 254(h)(1)(B).

C. Health Care Providers

1. What Services to Support

89. Section 254(h)(1)(A) requires telecommunications carriers ''upon receiving a bona fide request, [to] provide telecommunications services which are necessary for the provision of health care services in a State, including instruction relating to such services, to any public or nonprofit health care provider that serves persons who reside in rural areas in that State at rates that are reasonably comparable to rates charged for similar services in urban areas in that State.'' [192] According to the Joint Statement, Section 254(h) ''is intended to ensure that health care providers for rural areas * * * have affordable access to modern telecommunications services that will enable them to provide medical * * * services to all parts of the Nation.'' [193] The Section is also intended to ensure that ''rural health care provider[s] receive an affordable rate for the [telecommunications] services necessary for the purposes of telemedicine and instruction relating to such services.'' [194]

90. Section 254(c)(3) authorizes the Commission to designate support for ''additional services'' that are not included in the list of services that should receive universal service support under the four definitional criteria of Section 254(c)(1), when those services are provided to ''health care providers for the purposes of [S]ubsection [254](h).'' [195] Pursuant to Sections 254(c)(3) and 254(h), we propose to ''designate additional services'' provided to rural health service providers for support. We propose to designate for support these additional telecommunications services to the extent ''necessary for the provision of [rural] health care services in a State.'' [196] We ask interested parties to propose descriptions of the kinds of telecommunications services that are ''necessary for the provision of [rural] health care services.'' [197]

91. Current applications of telemedicine include storage and dissemination of patient records for diagnostic purposes, image compression for efficient storage and retrieval of image data, image-processing for diagnostic purposes, digital transmission of large two-dimensional and three-dimensional medical images, and computerized remote-control of medical equipment.[198] They may also include the ability to gain easy and rapid access to medical databases, such as those of transplant candidates. Emerging telemedical applications include real-time transmission of video images (i.e., for physician-to-physician and physician-to-patient consultations); direct transmission of medical data to hospitals from medical devices to patients at home; and ''data mining'' of large databases of patient records for use in medical education and diagnostics.[199] In transmitting medical information, some aspects of telemedicine may require telecommunications services meeting high technical standards, such as standards for quality of visual resolutions.[200]

92. Many of the telemedical applications discussed above require high-speed telecommunications capability. Asynchronous transfer mode (ATM) and integrated systems digital network (ISDN) technologies may provide the most promising choices for transfer of telemedicine data.[201] In describing telecommunications services that they believe ''necessary for the provision of [rural] health care services,'' commenters should discuss the number of simultaneous use transmission paths and the speed of transmission required by telemedicine practitioners. To the extent that specific telecommunications services constitute ''advanced telecommunications and information services,'' as described in Section 254(h)(2)(A), we request that commenters evaluate the extent to which providing health care providers with access to those services is ''technically feasible and economically reasonable.'' [202]

93. We seek comment on what ''additional services'' [203] are necessary ''for the provision of [rural] health care services in a state.'' [204] In addition, we seek comment on the nature of the ''instruction relating to such [health care] services'' telecommunications carriers provide their subscribers.[205]

94. We seek technology-neutral descriptions of the telecommunications functionalities that health care providers require as well as the names of the current technologies they are using to provide these functionalities. We also request comment on whether limiting discounts to outgoing services would be sufficient to meet the needs of rural health care providers or whether incoming services should also be discounted. We ask the Joint Board convened herein to prepare a recommended decision regarding these issues.

2. How to Implement

95. To implement Sections 254(h)(1)(A) of the 1996 Act, we must designate areas as either urban or rural. This is necessary to determine whether a particular health care provider ''serves persons who reside in rural areas'' and to identify the ''urban areas in that State,'' for purposes of establishing ''reasonably comparable'' rates for ''telecommunications services which are necessary for the provision of health care services in a State.'' For these purposes, we seek a methodology that is based on publicly available data, is neither under-inclusive nor over-inclusive, and that is easily administered.[206]

96. One alternative could be to adopt the existing classification system developed by the Office of Rural Health Policy of the Health Resources and Services Administration (HRSA) for its Rural Health Services Outreach Grant Program.[207] The HRSA classifications are based initially on Metropolitan Statistical Areas (MSAs) designated by the Office of Management and Budget (OMB). MSAs divide the nation into metropolitan and nonmetropolitan counties, which we would treat as urban and rural areas, respectively. The HRSA criteria, however, recognize that some MSAs are extremely large and contain some very rural areas.

97. Another approach would use data prepared by the United States Department of Agriculture's Economic Research Service.[208] The Economic Research Service divides nonmetropolitan areas into six categories, depending on whether or not they are adjacent to a metropolitan county and whether the population of the county is a) less than 2,500, b) between 2,500 and 20,000, or c) greater than 20,000.[209] Because these data do

[192] *Id.* § 254(h)(1)(A).

[193] S. Conf. Rep. No. 104–230, 104th Cong., 2d Sess. 132 (1996).

[194] *Id.* at 133.

[195] 1996 Act sec. 101(a), § 254(c)(3).

[196] *Id.* § 254(h)(1)(A).

[197] See *id.* § 254(h)(1)(A).

[198] Peter A. Ensminger, Telemedicine, Northeast Parallel Architectures Center (1996).

[199] *Id.*

[200] See American College of Radiology Standard for Teleradiology, Res. 21 (1994) (available from the American College of Radiology).

[201] Ensminger, *supra.* n. 194. Because they have capacity to transmit large quantities of data quickly, ATM and ISDN would facilitate the high-speed transfer of telemedicine data.

[202] 1996 Act sec. 101(a), § 254(h)(2).

[203] *Id.* § 254(c)(3).

[204] *Id.* § 254(h)(1)(A).

[205] *Id.*

[206] See S. Conf. Rep. No. 104–230, 104th Cong., 2nd Sess. 1 (1996) (expressing a congressional intent to create a ''pro-competitive, de-regulatory national policy framework'').

[207] See Health Resources and Servs. Admin., Dep't of Health and Human Servs., Notice of Availability of Funds, 60 FR 64168, 64169 (1995).

[208] See U.S. Congress, Office of Technology Assessment, Rural America at the Crossroads: Networking for the Future 36–38 (1991).

[209] *Id.* at 38.

not define urban and rural areas, we invite the commenters to suggest ways we could use them to determine whether areas should be considered urban or rural.

98. We ask interested parties to comment on these methods for defining rural areas in a state for the purposes of the sections of the Act pertaining to rural health care providers. We also invite comment on alternative methodologies for delineating urban and rural areas for these purposes. We ask commenters to discuss whether each proposed methodology is based on publicly available data, is neither under-inclusive nor over-inclusive, and could be easily administered. In addition, we seek comment on use of these evaluative criteria and on the costs associated with these proposals pursuant to Section 254(b)(5), which requires universal service support mechanisms to be ''specific, predictable and sufficient.''

99. Section 254(h)(1)(A) requires telecommunications carriers to provide rural health care providers with the services that we define as necessary ''at rates that are reasonably comparable to rates charged for similar services in urban areas in [their] State.'' [210] We believe that fulfillment of our responsibilities under Sections 254(h)(1)(A) and 254(h)(2) may require that we adopt guidelines for telecommunications carriers to follow in establishing such rates. We ask commenters to address whether compliance with those guidelines should be a condition of eligibility for telecommunications carriers to receive interstate support for telecommunications services provided to rural health care providers under Section 254(h).

100. In establishing an appropriate methodology for ensuring ''reasonably comparable'' rates, we wish to minimize, to the extent consistent with Section 254, the administrative burden on regulators and carriers. It could, for example, prove unduly burdensome to require the submission of information necessary to calculate weighted averages of the rates in all urban areas in order that the telecommunications services which are ''necessary'' for the provision of health care to be provided to rural health care providers are priced at reasonably comparable rates.[211] We interpret the ''reasonably comparable'' requirement as requiring less than absolute precision in determining the appropriate rates for rural health care providers under these provisions of the new Act. Accordingly, we request comment on how carriers should derive the rates applicable to rural health care providers to ensure they are priced at a reasonably comparable rate.

101. In addition, the amount of credit or reimbursement to carriers from the health care support mechanism is based on the difference between the price actually charged to eligible health care providers and the rates for similar, if not identical, services provided to ''other customers'' in rural areas in that State.[212] We invite comments on how to determine the rate for rural non-health care providers and the rate for urban health care providers necessary to calculate the amount of credit. Commenters should discuss whether average rates should be computed or whether some other method would be more appropriate.

102. While it may be difficult for carriers to establish the rates for similar services provided to rural areas in a State if identical services are not provided, it is likely that similar services will generally be available. We seek comment, however, on whether there is a need to define when services are comparable and, if so, how we might do so.

103. We also ask that interested parties address the appropriate safeguards to ensure that telecommunications carriers providing service pursuant to Section 254(h)(1)(A) are, in fact, responding to the receipt of a ''bona fide request'' for ''telecommunications services which are necessary for the provision of [rural] health care services in a State.'' [213] We seek comment on whether we might require certification from rural health care providers requesting telecommunications services under Section 254(h)(1)(A) or from telecommunications carriers that provide such services. One approach to such certification would be to require each telecommunications carrier providing telecommunications services to rural health care providers under this provision to obtain written certification that the services are necessary for the provision of health care services. We seek comment on this approach, as well as suggestions for alternative or additional measures to ensure that universal service support provided to telecommunications carriers under Section (h)(1)(A) is used for its intended purpose.

3. Who Is Eligible for Support

104. In order to receive support under the universal service support mechanisms for service to rural health care providers, a telecommunications carrier must meet two criteria. First, it must provide service to a ''health care provider'' as defined by Section 254(h)(5)(B). Section 254(h)(5)(B) defines ''health care provider'' to mean:

(i) post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools;

(ii) community health centers or health centers providing health care to migrants;

(iii) local health departments or agencies;

(iv) community mental health centers;

(v) not-for-profit hospitals;

(vi) rural health clinics; and

(vii) consortia of health care providers consisting of one or more entities described in clauses (i) through (vi).[214]

Second, a telecommunications carrier must provide service to ''persons who reside in rural areas'' in the state in which the health care services proposal for support are provided under Section 254(h)(1)(A).[215]

105. Section 254(h)(1)(A) states that a ''telecommunications carrier'' providing service under this paragraph ''shall be entitled to have an amount equal to the difference, if any, between the rates for services provided to health care providers for rural areas in a State and the rates for similar services provided to other customers in comparable rural areas in that State treated as a service obligation as a part of its obligation to participate in the mechanisms to preserve and advance universal service.'' [216] This language differs from that of Section 254(h)(1)(B), which explicitly permits ''[a]ll telecommunications carriers serving a geographic area'' providing designated services to schools and libraries to be reimbursed for services, either through ''an offset to its obligation to contribute to the mechanisms to preserve and advance universal service,'' or through ''reimbursement utilizing the support mechanisms to preserve and advance universal service.'' [217]

106. In view of the differences described in the foregoing paragraph, we request comment on whether any statutory or policy rationale requires treating telecommunications carriers providing service under Section 254(h)(1)(A) differently than telecommunications carriers providing service under Section 254(h)(1)(B) for reimbursement purposes. We invite commenters to address whether Section 254(h)(1)(A) provides for an offset to contributions, and whether it prohibits direct compensation payments. Finally,

[210] 1996 Act sec. 101(a), § 254(h)(1)(A).

[211] *Id.*

[212] *Id.*

[213] *Id.*

[214] *Id.* § 254(h)(5)(B).

[215] *Id.* § 254(h)(1)(A).

[216] *Id.*

[217] *Id.* § 254(h)(1)(B).

we request comment addressing the desirability of using the same offset or reimbursement alternatives set forth in Section 254(h)(1)(B). We request the Joint Board's recommendation regarding the appropriate resolution of the issues described in this section.

V. Enhancing Access to Advanced Services for Schools, Libraries, and Health Care Providers

A. Goals and Principles

107. Section 254(b)(6) directs the Commission and the Joint Board to adopt policies designed to assure ''elementary and secondary schools and classrooms, health care providers, and libraries * * * access to advanced telecommunications services.'' [218] Section 254(c)(3) enables the Commission to designate additional, special services for universal service support for eligible schools, libraries and health care providers.

108. Section 254(h)(2) directs the Commission to establish ''competitively neutral rules * * * to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms, health care providers, and libraries.'' [219] As the Joint Statement explains with respect to advanced services:

> New subsection (h)(2) requires the Commission to establish rules to enhance the availability of advanced telecommunications and information services to public institutional telecommunications users. For example, the Commission could determine that telecommunications and information services that constitute universal service for classrooms and libraries shall include dedicated data links and the ability to obtain access to educational materials, research information, statistics, information on Government services, reports developed by Federal, State, and local governments, and information services which can be carried over the Internet.[220]

The Commission is further directed to ''define the circumstances under which a telecommunications carrier may be required to connect its network to such public institutional telecommunications users.'' [221]

B. How to Implement

109. In Section IV, we sought to identify a set of telecommunications services to be supported by Federal universal service support mechanisms for schools, libraries and rural health care providers. We now seek to identify those advanced telecommunications and information services that carriers should make available to all eligible health care providers, libraries and school classrooms to the extent technically feasible and economically reasonable. We ask commenters to identify such services and to identify the features and functionalities required to give eligible health care providers, libraries and school classrooms access to those services. We also ask commenters to suggest competitively neutral rules that we could adopt ''to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms, health care providers, and libraries.'' Specifically, we ask whether the ''advanced telecommunications and information services'' addressed in Section 254(h)(2) should be a broader, narrower, or identical group to those supported under Section 254(h)(1). Further, we request suggestions as to any additional measures, other than discounts and financial support, that would promote deployment of advanced services to school classrooms, libraries and health care providers.

110. For each measure, we ask commenters to address: whether it would be competitively neutral for carriers, telecommunications providers, and any other affected entities, and whether it complies with the Act's requirement that ''telecommunications services and network capacity'' provided to public institutional telecommunications users ''may not be sold, resold, or otherwise transferred by such user in consideration for money or any other thing of value.'' [222] We seek comment on how we should assess whether particular services that provide access to advanced telecommunications and information services are ''technically feasible and economically reasonable.'' [223] We also ask that the commenters attempt to estimate the potential costs associated with such measures, pursuant to the principle stated in Section 254(b)(5) that support mechanisms should be ''specific, predictable and sufficient.'' [224] Similarly, we request proposals to implement our responsibility, under Section 254(h)(2)(B), ''to define the circumstances under which a telecommunications carrier may be required to connect its network to such public institutional telecommunications users.'' [225] We also refer these issues to the Joint Board for its recommendation.

C. Who Is Eligible for Support

111. For purposes of Section 254(h)(2), schools and libraries have definitions identical to those in Section 254(h)(1), discussed at part V.B.3., above. Congress also intended to benefit ''all * * * health care providers,'' as defined in Section 254(h)(5)(B),[226] not just rural health care providers. We invite interested parties to comment and ask the Joint Board's recommendation regarding this interpretation.

VI. Other Universal Service Support Mechanisms

112. The 1996 Act states that any federal universal service support provided to eligible carriers ''should be explicit'' and should be recovered from all telecommunications carriers that provide interstate telecommunications service ''on an equitable and nondiscriminatory basis.'' [227] Currently, approximately 25 percent of the unseparated cost of incumbent LECs' subscriber loops (the lines connecting subscribers to local telephone company central offices) is allocated to the interstate jurisdiction. These carriers recover a significant portion of their loop costs allocated to the interstate jurisdiction directly from subscribers through flat monthly subscriber line charges (SLCs), but the Commission's rules impose caps on the SLC rate at $3.50 per month for residential and single-line business users and $6.00 per month for multi-line business users.[228] The incumbent LECs' remaining interstate allocated loop costs are currently recovered through a per-minute carrier common line (CCL) charge paid by IXCs, and ultimately by subscribers in the form of increased interstate long distance rates.

113. Many interested persons have argued that all costs associated with facilities dedicated to the use of a single subscriber should be recovered through

[218] Id. § 254(b)(6).

[219] *Id.* § 254(h)(2)(A).

[220] S. Conf. Rep. No. 104–230, 104th Cong., 2d Sess. 133 (1996).

[221] 1996 Act sec. 101(a), § 254(h)(2)(B). ''Public institutional telecommunications user'' is defined as an elementary or secondary school, a library or health care provider as defined in Section 254 (h)(5)(C). *Id.* § 254(h)(5)(C).

[222] *Id.* § 254(h)(3).

[223] *Id.* § 254(h)(2)(A).

[224] *Id.* § 254(b)(5).

[225] *Id.* § 254(h)(2)(B).

[226] Id. § 254(h)(2)(A). See discussion *supra* at part V.C.3.

[227] 1996 Act sec. 101(a), § 254 (d), (e).

[228] 47 CFR 69.104(c)–(e), 69.203(a). If the interstate allocation of common line costs in a study area is lower than the SLC cap, the lower number is used.

a flat, non-traffic sensitive charge assessed on end users.[229] They contend that the existing CCL charge artificially raises rates for interstate long distance usage and distorts competitive incentives in the local exchange marketplace. Moreover, the imposition of per-minute charges on one class of service—interstate interexchange long distance—to reduce flat rates for end users (with the goal of increasing telephone subscribership) appears to constitute a universal service support flow. High-volume interstate long distance customers contribute more than the full cost of their subscriber lines, while low-volume customers contribute less. The Federal-State Joint Board that recommended a mandatory cap on the SLCs emphasized that this limitation was designed to support universal service.[230] The current CCL charge appears to be inconsistent with the directives of the 1996 Act that universal service support flows ''be explicit'' and be recovered on a ''nondiscriminatory basis'' from all telecommunications carriers providing interstate telecommunications service.[231] The Commission and a Federal-State Joint Board have found, in the past, that increased flat rate recovery of LECs' subscriber loop costs has substantially stimulated demand for interstate switched services, and has produced major economic efficiency gains with minimal impact on subscribership.[232] At the same time, recovery of the full interstate allocation of common line costs directly from end-users might cause the flat monthly rates paid by certain subscribers to exceed acceptable levels, and could have an adverse impact on telephone subscribership.

114. In the mid-1980s, we referred to a Federal-State Joint Board questions relating to the recovery of interstate-allocated subscriber loop costs.[233] We do so again here. We now seek comment on whether to continue the existing subsidy so as to preserve reduced end user common line charges, or to eliminate or reduce the subscriber loop portion of the interstate CCL charge and, instead, permit LECs to recover these costs from end users.[234] We invite parties to comment on whether the existing method for recovery of common line costs allocated to the interstate jurisdiction comports with economic efficiency and the specific mandates of the 1996 Act. We also seek comment on the extent to which increases in SLCs would reduce telephone subscribership, if at all, and the effect on subscribership across different income levels and telecommunications consumption patterns. We seek comment on the level of explicit universal service support that would be required to avoid unacceptable harm to subscribership under such a scenario, and the extent to which such support could be provided through the targeted support mechanisms to low-income customers and customers in rural, insular, or high-cost areas discussed above.[235] In the alternative, we seek comment on whether all or a portion of the current level of support for subscriber loop rates should be retained but restructured, consistent with the mandate of the 1996 Act, to ''be explicit'' and to be funded in a ''nondiscriminatory'' manner.[236] A combination of these approaches is also possible: For example, the caps on interstate SLCs could be increased gradually but not eliminated, with the balance recovered from the universal service support fund proposed below. We also seek comment on whether eligibility for these support mechanisms must, or should, be limited to state-certified eligible carriers, under the 1996 Act.

115. The CCL charge assessed by larger incumbent LECs also recovers revenues associated with long-term support (LTS) payments remitted to the National Exchange Carrier Association, Inc. (NECA).[237] Until 1989, the Commission's rules required all LECs to participate in a nationwide averaged common line pool. That mandatory pooling arrangement was replaced in 1989 by the current system, which permits LECs to leave the pool and set their CCL rates based on their own interstate separated costs of subscriber loops. The LECs that withdrew from the common line pool are required to remit LTS payments to NECA, which distributes the LTS payments to LECs remaining in the nationwide common line pool. With the introduction of price cap regulation, the uniform CCL rate assessed by LECs remaining in the pool is based on the average CCL rate charged by price cap LECs.[238] LTS payments, which directly increase interstate access charges assessed by some LECs so as to reduce charges assessed by other LECs, are an identifiable support flow in the existing interstate access charge system. We propose to eliminate the recovery of LTS revenues through incumbent LECs' interstate CCL charges, and we seek comment on whether the LTS system should be eliminated or restructured in an explicit and nondiscriminatory manner, consistent with the universal service support mechanisms described elsewhere in this Notice and with the principles espoused in the 1996 Act. We also seek comment on whether the principles governing our deliberations in this proceeding permit, or even require, a transition period for carriers that receive LTS to adjust to any changes in the LTS system or rate structure for recovering loop costs allocated to the interstate jurisdiction. We seek a Joint Board recommendation on all of these issues.

VII. Administration of Support Mechanisms

A. Goals and Principles

116. The 1996 Act states that ''[a]ll providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service''[239] through ''specific, predictable and sufficient Federal and State mechanisms.''[240] To accomplish this, the Act stipulates that ''[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an

[229] See Com. Car. Bur., FCC, Preparation for Addressing Universal Service Issues: A Review of Current Interstate Support Mechanisms 90–97 (1996); *cf.* Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers; Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers, Notice of Proposed Rulemaking, CC Docket Nos. 95–185, 94–54, FCC 95–505, para. 43 (rel. Jan. 11, 1996), summarized in 61 FR 3644 (1996).

[230] MTS and WATS Market Structure; Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, Recommended Decision and Order, 2 FCC Rcd 2324 (1987) (1987 Recommended Decision); 1984 Recommended Decision.

[231] 1996 Act sec. 101(a), § 254 (d), (e).

[232] 1987 Report and Order, at 2954, 2957; see also Jerry Hausman et al., The Effects of the Breakup of AT&T on Telephone Penetration in the United States, 83 Am. Econ. Ass'n Papers & Proc. 178, 183 (1993).

[233] See 1985 Lifeline Order (adopting, with minor modifications, the Joint Board recommendations issued in 1984 Recommended Decision); 1987 Report and Order (adopting, with minor modifications, the Joint Board recommendations issued in 1987 Recommended Decision).

[234] The LECs' interstate CCL charge currently also recovers revenues associated with the provision of payphone service. Pursuant to the 1996 Act, within nine months after the date of its enactment, the Commission will initiate a proceeding to discontinue this element of the CCL charge and replace it with a per-call compensation system for recovering payphone costs. 1996 Act sec. 151(a), § 276(b)(1)(A), (B). The CCL charge also recovers common line long-term support (LTS) payments, which are discussed in the following paragraph.

[235] See supra part III.B., C.

[236] 1996 Act sec 101(a), § 254(d), (e).

[237] 47 CFR 69.603(e), 69.612.

[238] Com. Car. Bur., FCC, Preparation for Addressing Universal Service Issues: A Review of Current Interstate Support Mechanisms 71–77 (1996).

[239] 1996 Act sec. 101(a), § 254(b)(4).

[240] *Id.* § 254(b)(5).

equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.'' [241] It further stipulates that ''[e]very telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State.'' [242]

117. In view of these provisions, we seek comment on how financial responsibility should be divided between interstate telecommunications carriers and intrastate telecommunications carriers for the costs associated with the universal service support mechanisms authorized under Section 254. We invite commenters to discuss possible approaches for allocating this financial obligation, detailing the advantages and disadvantages of each approach. We ask, in particular, that interested parties address the question of whether passage of the 1996 Act should change existing assumptions about the sources of universal service support. Finally, we request that the Joint Board in this proceeding recommend an appropriate basis, with reference to the 1996 Act, upon which to assign responsibility between the interstate and intrastate jurisdictions for contributions needed to fund support for universal service.

B. Administration

1. Who Should Contribute

118. Under the 1996 Act, we must ensure that telecommunications carriers' contributions that fund universal service support are collected ''on an equitable and nondiscriminatory basis'' using ''specific, predictable, and sufficient mechanisms.'' [243] The Act states that ''[a]ll providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.'' [244] To fulfill this obligation, Section 254(d) requires that ''[e]very telecommunications carrier that provides interstate telecommunications services'' [245] contribute to ''preserve and advance universal service'' [246] and that ''[a]ny other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires.'' [247] The Act defines the term ''telecommunications carrier'' as ''any provider of telecommunications services,'' and the term ''telecommunications service'' as ''the offering of telecommunications for a fee *directly to the public*, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.'' [248] In addition, the Act defines ''telecommunications'' as ''the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.'' [249]

119. We seek comments that identify which service providers fall within the scope of the term ''telecommunications carrier[s] that provide[] interstate telecommunications services.'' [250] We also seek comment on whether support obligations associated with universal service mechanisms should extend only to telecommunications carriers providing interstate telecommunications services, or whether we should impose universal service support obligations more broadly, as Section 254(d) of the Act authorizes us to do. Under Section 254(d), universal service support obligations could be imposed upon ''other provider[s] of interstate telecommunications,'' which, pursuant to the definition of ''telecommunications'' in Section 3 of the 1996 Act, would include entities that provide interstate ''transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.'' [251] We seek comment and Joint Board recommendations on whether ''the public interest * * * requires'' that we extend support obligations to ''[a]ny other provider[s] of interstate telecommunications,'' [252] and, if so, what categories of providers, other than telecommunications carriers, should be so obligated.

120. Section 254(d) authorizes the Commission to ''exempt a carrier or class of carriers from [the obligation to make contributions] if the carrier's telecommunications activities are limited to such an extent that the level of such carrier's contribution to the preservation and advancement of universal service would be de minimis.'' [253] The Joint Explanatory Statement of the Committee of Conference clarifies that such exemption should be given ''only * * * in cases where the administrative cost of collecting contributions from a carrier or carriers would exceed the contribution that carrier would otherwise have to make under the formula for contributions selected by the Commission.'' [254] We seek comment on whether we should establish rules of general applicability for exempting very small telecommunications providers, and if so, what the basis should be for determining that the administrative cost of collecting support would exceed a carrier's potential contribution. Within those parameters, we also specifically seek comment on measures to avoid significant economic harm to small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act.[255] In its Recommended Decision, we request that the Joint Board consider all of these issues related to defining the contributors to universal service support.

2. How Should Contributions Be Assessed

121. Section 254(d) requires that ''[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.'' [256] Furthermore, in evaluating different approaches to collecting contributions, we must ensure that ''[a]ll providers of telecommunications services make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.'' [257]

122. *Contributions Based on Gross Revenues.* One potential approach might be to adopt the mechanism used for the approximately $30 million-per-year Telecommunications Relay Services (TRS) program. TRS provides ''a telephone transmission service that allows persons with hearing or speech disabilities to communicate by telephone in a manner functionally equivalent to the ability of persons without such disabilities.'' [258] Each

[241] *Id.* § 254(d).

[242] *Id.* § 254(f).

[243] *Id.* § 254(d).

[244] *Id.* § 254(b)(4).

[245] *Id.* § 254(d).

[246] *Id.*

[247] *Id.*

[248] *Id.* § 153(49), (51) (emphasis added).

[249] *Id.* § 153(48). For example, the switched message and private line services offered by LECs and IXCs provide ''telecommunications'' to end users.

[250] See *id.* § 254(d).

[251] *Id.*

[252] *Id.* § 254(d).

[253] *Id.*

[254] S. Conf. Rep. No. 104–230, 104th Cong., 2d Sess. 131 (1996).

[255] 5 U.S.C. 601(3).

[256] 1996 Act sec. 101(a), § 254(d).

[257] *Id.* § 254(b)(4).

[258] 47 U.S.C. 225(a)(3). TRS facilities have specialized equipment and staff who relay

contributor's TRS payment is based on a pro rata share of its gross interstate revenues.[259]

123. *Contributions Based on Revenues Net of Payments to Other Carriers.* Alternatively, we could consider the mechanism employed for the assessment and collection of regulatory fees to recover part of the cost of the Commission's regulatory activities. This mechanism was established in our *Regulatory Fees Order*,[260] where we evaluated the advantages and disadvantages of alternative mechanisms for collecting Commission fees on a per line, per minute of use, and per dollars of revenue basis. That Order directed that fees be assessed based on gross interstate revenues net of payments made to other telecommunications carriers.

124. *Contributions Based on Per-Line or Per-Minute Units.* We also could adopt a mechanism based on per-line or per-minute charges. These approaches, however, would require the Commission to adopt and administer ''equivalency ratios'' for calculating the contributions owed by providers of services that were not sold on a per-line or per-minute basis into their respective per-line or per-minute units. In addition, these approaches may favor certain services or service providers over others.

125. We invite comment on the relative merits of these approaches and the extent to which they do or do not satisfy the requirements of the Act..[261] We seek comment on whether, for purposes of funding federal universal service support mechanisms, we should base contributions from interstate carriers (and, possibly, from other interstate service providers) on both their interstate and intrastate revenues or on their interstate revenues only. If commenters propose that contributions should be based on interstate revenues only, we ask for proposals on how to determine the interstate revenues for the many and varied telecommunications carriers and telecommunications service providers that are not subject to our jurisdictional separations rules and, in some cases, may not have a clear basis for delineating interstate and intrastate services. In particular, we ask for comment on the practicality of the approach used for the TRS fund.[262]

126. We also invite commenters to suggest alternative methodologies for calculating a carrier's or service provider's contribution to universal service support. The comments should address which method would be the most easily administered and competitively neutral in its effect upon contributing carriers and service providers. In addition, commenters should address how these methods could be adapted if we were to require non-carrier providers of telecommunications services to make contributions to the universal service funds. We ask the Joint Board to address these issues in its Recommended Decision.

3. Who Should Administer

127. Section 254(b)(4) of the 1996 Act states that ''[a]ll providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.'' [263] Moreover, Section 254(d) requires that ''[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.'' [264] The rules for assessing support obligations discussed above not only must conform to these provisions, but also must be administered fairly, consistently, and efficiently. We seek comment on the best approach to administer the universal service mechanisms fairly, consistently, and efficiently.

128. One way to administer the fund would be through a non-governmental fund administrator. We believe the fund should be administered by the candidate who can administer it in the most efficient, fair, and competitively neutral manner. In addition, considering the large number of potential contributors and recipients of universal service funds under Section 254, it would appear that administration of the funds will require large-scale information processing and data base capabilities. Moreover, the administrator should have the ability to apply eligibility criteria consistently, ensuring that all carriers eligible for support, but no ineligible carriers, are properly compensated by the support mechanisms. Finally, the administrator should assure that all entities required to contribute to the fund do so, and in the appropriate amounts.

129. We ask that commenters discuss these criteria and any others we might use to assess qualifications of any candidates to administer the funds, for how long an administrator should be appointed, and any other matters related to the selection and appointment of a fund administrator. We also invite parties to suggest the most efficient and least costly methods to accomplish the administrative tasks associated with fund administration.

130. Rather than appoint a non-governmental fund administrator, we could have the funds collected and distributed by state public utility commissions. Under this approach, individual state commissions or groups of state commissions would be responsible for administering the funds' collection and distribution, operating under plans approved by the Commission. They might delegate the administration of the fund to a governing board composed of representatives from the state commissions, the fund contributors, and the fund recipients. This board could also function as a central clearinghouse to the extent collection and distribution issues extended beyond the boundaries of individual states. We request comment on this alternative approach and on what provisions should be incorporated in any plan that the Commission approves for administering the funds under this option. We also invite proposals for other means of administering support mechanisms.

131. Pursuant to the 1996 Act's principle that support for universal service should be ''predictable,'' [265] we seek comment estimating the cost of administration estimating the cost of administration using either of the two approaches that we have discussed. Commenters proposing an alternative method should also identify the costs of administration associated with their suggested method. Finally, we request that the Joint Board address these issues

conversations between persons using text telephones and persons using traditional telephones.

[259] Telecommunications Relay Services, and the Americans with Disabilities Act of 1990, *Third Report and Order*, 8 FCC Rcd 5300 (1993).

[260] Assessment and Collection of Regulatory Fees for Fiscal Year 1995, Price Cap Treatment of Regulatory Fees Imposed by Section 9 of the Act, *Report and Order*, 10 FCC Rcd 13512 (1995) (*Regulatory Fees Order*).

[261] In using the TRS program and our *Regulatory Fees Order* as potential models, we are only proposing their methodologies. We are not suggesting that the range of contributors providing universal support should be limited to the contributors to those programs. Questions regarding who should contribute to universal fund support are discussed above in part VIII.B.1. of this Notice.

[262] The TRS work sheet instructs carriers to, wherever possible, calculate the percentage of total revenues that are interstate by using information from their books of accounts and other internal data reporting systems. Carriers that cannot calculate a percentage from their books or from internal data may elect to rely on special studies to determine interstate percentages.

[263] 1996 Act sec. 101(a), § 254 (b)(4).

[264] Id. § 254(d).

[265] Id. § 254(b)(5).

regarding fund administration in its Recommended Decision.

VIII. Composition of the Joint Board

132. Under Section 254(a) of the 1996 Act, the Joint Board in this proceeding must consist of eight members: three Commissioners from this Commission; four State Commissioners nominated by the National Association of Regulatory Utility Commissioners (NARUC); and one State-appointed utility consumer advocate nominated by the National Association of State Utility Commissioners.[266] Section 410(c) also specifies that ''the Chairman of the Commission, or another Commissioner designated by the Commission, shall serve as Chairman of the Joint Board.'' [267]

133. In accordance with these provisions, the three Commissioners from this Commission are the Honorable Reed E. Hundt, the Honorable Andrew C. Barrett, and the Honorable Susan Ness. The four Commissioner nominated by NARUC are the Honorable the Honorable Julia L. Johnson of the Florida Public Service Commission, the Honorable Kenneth McClure of the Missouri Public Service Commission, the Honorable Sharon L. Nelson of the Washington Utilities and Transportation Commission, and the Honorable Laska Schoenfelder of the South Dakota Public Utilities Commission,[268] The utility consumer advocate nominated by NASUCA is Martha S. Hogerty, Public Counsel for the State of Missouri.[269] The Honorable Reed E. Hundt shall serve as Chairman of the Joint Board.

IX. Procedural Matters

A. Ex Parte

134. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.[270]

B. Regulatory Flexibility Analysis

135. Pursuant to Section 603 of the Regulatory Flexibility Act, the Commission has prepared the following regulatory flexibility analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the Notice, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. § 601 *et seq.* (1981).

136. *Reason for Action.* The Telecommunications Act of 1996 requires the Commission to initiate a rulemaking to define the services generally supported by Federal universal service support mechanisms. This Notice addresses issues of the services that should receive universal service support with respect to elementary and secondary schools and classrooms, libraries, health care providers, as well as universal support service mechanisms. Issues raised in this Notice will be referred to a Federal-State Joint Board.

137. *Objectives.* To propose rules to implement Sections 101 and 102 of the Telecommunications Act of 1996. We also desire to adopt rules that will be easily interpreted and readily applicable and, whenever possible, minimize the regulatory burden on affected parties.

138. *Legal Basis.* Action as proposed for this rulemaking is contained in Sections 101 and 102 of the Telecommunications Act of 1996 (to be codified at 47 U.S.C. 254 and 214(e), respectively).

139. *Description, potential impact and number of small entities affected.* Until we receive more data, we are unable to estimate the number of small telecommunications service providers that would be affected by any of the proposals discussed in the Notice. We have, however, attempted to reduce the administrative burdens and cost of compliance for small telecommunications service providers.

140. *Reporting, record keeping and other compliance requirements.* The proposals under consideration in this Notice do not include the reporting and record keeping requirements of telecommunications service providers.

141. *Federal rules which overlap, duplicate, or conflict with this rule.* None.

142. *Any significant alternatives minimizing impact on small entities and consistent with stated objectives.* Wherever possible, the Notice proposes general rules, or alternative rules to reduce the administrative burden and cost of compliance for small telecommunications service providers. In addition, the Notice invites comment on exemptions from the proposed rules for small telecommunications companies. Finally, the Notice seeks comment on measures to avoid significant economic impact on small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act.

C. Comment Dates

143. We invite comment on the issues and questions set forth above. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules,[271] interested parties may file comments on or before April 8, 1996, and reply comments on or before May 3, 1996. Comments and Reply Comments will be limited to 25 pages apiece, not including appendices of factual material. To file formally in this proceeding, interested parties must file an original and four copies of all comments, reply comments, and supporting comments. Interested parties should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Parties must also serve comments on the Federal-State Joint Board in accordance with the service list. Parties should send one copy of any documents filed in this docket to the Commission's copy contractor, International Transcription Service, Room 640, 1990 M Street, N.W., Washington, D.C. 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554.

144. Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Ernestine Creech, Common Carrier Bureau, Accounting and Audits Division, 2000 L Street, N.W., Suite 257, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using WordPerfect 5.1 for

[266] Id. § 254(a).

[267] 47 U.S.C. § 410(c).

[268] The National Association of Regulatory Utility Commissioners (NARUC) nominated Ms. Johnson, Mr. McClure, Ms. Nelson, and Ms. Schoenfelder to serve on the Federal-State Joint Board. Letter from James Bradford Ramsay, Deputy Assistant General Counsel, NARUC, to Mr. William F. Caton, Secretary, Federal Communications Commission, February 28, 1996.

[269] Nominated pursuant to 1996 Act sec. 101, § 254(a)(1), by the National Association of State Utility Consumer Advocates (NASUCA). Letter from Debra Berlyn, Executive Director, NASUCA, to The Honorable Reed E. Hundt, Chairman, Federal Communications Commission, February 26, 1996.

[270] See generally 47 CFR 1.1202, 1.1203, 1.1206(a).

[271] 47 CFR 1.415, 1.419.

Windows software. The diskette should be submitted in ''read only'' mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comment) and date of submission. The diskette should be accompanied by a cover letter.

X. Ordering Clauses

145. Accordingly, it is ordered That, pursuant to Sections 1, 4(i), 4(j), and 403, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and 403, and Sections 101 and 102 of the Telecommunications Act of 1996, Public Law 104–104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. 254 and 47 U.S.C. 214(e), respectively), that notice is hereby given of proposed amendments to Parts 36 and 69 of the Commission's Rules, 47 CFR Parts 36 and 69, as described in this Notice of Proposed Rulemaking.

146. It is further ordered That, pursuant to Section 410(c) of the Communications Act of 1934, 47 U.S.C. 410(c), and Sections 101 of the Telecommunications Act of 1996, Public Law 104–104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. 254), that the Federal-State Joint Board on Universal Service be convened.

147. It is further ordered That, pursuant to Section 410(c) of the Communications Act of 1934, 47 U.S.C. 410(c), and Sections 101 and 102 of the Telecommunications Act of 1996, Public Law 104–104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. 254 and 47 U.S.C. 214(e), respectively), the proposals set forth in the Notice of Proposed Rulemaking are hereby referred to the Federal-State Joint Board established in this proceeding for the preparation of a recommended decision within nine months from enactment of the Telecommunications Act of 1996.

148. It is further ordered, pursuant to Section 410(c) of the Communications Act of 1934, 47 U.S.C. 410(c), and Sections 101 and 102 of the Telecommunications Act of 1996, Public Law 104–104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. 254 and 47 U.S.C. 214(e), respectively), that the Honorable Reed E. Hundt, the Honorable Andrew C. Barrett, the Honorable Susan Ness, the Honorable Julia L. Johnson of the Florida Public Service Commission, the Honorable Kenneth McClure of the Missouri Public Service Commission, the Honorable Sharon L. Nelson of the Washington Utilities and Transportation Commission, and the Honorable Laska Schoenfelder of the South Dakota Public Utilities Commission,[272] and Martha S. Hogerty,[273] Public Counsel for the State of Missouri are appointed to, and the Honorable Reed E. Hundt shall serve as Chairman of, the Federal-State Joint Board.

149. It is further ordered, That a copy of all filings in this proceeding shall be served on each of the appointees and staff personnel on the attached service list.

150. It is further ordered That, pursuant to Sections 410(c), 154(i) and 154(j) of the Communications Act of 1934, 47 U.S.C. 410(c), 154(i) and 154(j), and Sections 101 and 102 of the Telecommunications Act of 1996, Public Law No. 104–104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. 254 and 47 U.S.C. 214(e), respectively), the material described in part III.B. of this Notice of Proposed Rulemaking and Order Establishing a Joint Board is incorporated into the record in this proceeding.

151. It is further ordered That, the Secretary shall send a copy of this notice of proposed rulemaking, including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (1981).

List of Subjects

47 CFR Part 36

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Uniform System of Accounts.

47 CFR Part 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Attachment: Service List

The Honorable Reed E. Hundt, Chairman, Federal Communications Commission, 1919 M Street NW.—Room 814, Washington, D.C. 20554

The Honorable Andrew C. Barrett, Commissioner, Federal Communications Commission, 1919 M Street NW.—Room 826, Washington, D.C. 20554

The Honorable Susan Ness, Commissioner, Federal Communications Commission, 1919 M Street NW.—Room 832, Washington, D.C. 20554

The Honorable Julia Johnson, Commissioner, Florida Public Service Commission, Capital Circle Office Center, 2540 Shumard Oak Blvd., Tallahassee, FL 32399–0850

The Honorable Kenneth McClure, Vice Chairman, Missouri Public Service Commission, 301 W. High Street, Suite 530, Jefferson City, MO 65102

The Honorable Sharon L. Nelson, Chairman, Washington Utilities and Transportation Commission, P.O. Box 47250, Olympia, WA 98504–7250

The Honorable Laska Schoenfelder, Commissioner, South Dakota Public Utilities Commission, 500 E. Capital Avenue, Pierre, SD 57501

Martha S. Hogerty, Public Counsel for the State of Missouri, P.O. Box 7800, Harry S. Truman Building, Room 250, Jefferson City, MO 65102

Deborah Dupont, Federal Staff Chair, Federal Communications Commission, 2000 L Street NW., Suite 257, Washington, D.C. 20036

Paul E. Pederson, State Staff Chair, Missouri Public Service Commission, P.O. Box 360, Truman State Office Building, Jefferson City, MO 65102

Eileen Benner, Idaho Public Utilities Commission, P.O. Box 83720, Boise, ID 83720–0074

Charles Bolle, South Dakota Public Utilities Commission, State Capital, 500 E. Capital Avenue, Pierre, SD 57501–5070

William Howden, Federal Communications Commission, 2000 L Street NW., Suite 812, Washington, D.C. 20036

Lorraine Kenyon, Alaska Public Utilities Commission, 1016 West Sixth Avenue, Suite 400, Anchorage, AK 99501

Debra M. Kriete, Pennsylvania Public Utilities Commission, P.O. Box 3265, Harrisburg, PA 17105–3265

Clara Kuehn, Federal Communications Commission, 2000 L Street NW., Suite 257, Washington, D.C. 20036

Mark Long, Florida Public Service Commission, 2540 Shumard Oak Blvd., Gerald Gunter Building, Tallahassee, FL 32399–0850

Samuel Loudenslager, Arkansas Public Service Commission, P.O. Box 400, Little Rock, AR 72203–0400

Sandra Makeeff, Iowa Utilities Board, Lucas State Office Building, Des Moines, IA 50319

[272] The National Association of Regulatory Utility Commissioners (NARUC) nominated Ms. Johnson, Mr. McClure, Ms. Nelson, and Ms. Schoenfelder to serve on the Federal-State Joint Board. Letter from James Bradford Ramsay, Deputy Assistant General Counsel, NARUC, to Mr. William F. Caton, Secretary, Federal Communications Commission, February 28, 1996.

[273] Nominated pursuant to 1996 Act sec. 101, § 254(a)(1), by the National Association of State Utility Consumer Advocates (NASUCA). Letter from Debra Berlyn, Executive Director, NASUCA, to The Honorable Reed E. Hundt, Chairman, Federal Communications Commission, February 26, 1996.

Philip McClelland, Pennsylvania Office of Consumer Advocate, 1425 Strawberry Square, Harrisburg, PA 17120
Michael A. McRae, D.C. Office of the People's Counsel, 1133 15th Street NW.—Suite 500, Washington, D.C. 20005
Rafi Mohammed, Federal Communications Commission, 2000 L Street NW., Suite 812, Washington, D.C. 20036
Terry Monroe, New York Public Service Commission, Three Empire Plaza, Albany, NY 12223
Andrew Mulitz, Federal Communications Commission, 2000 L Street NW., Suite 257, Washington, D.C. 20036
Mark Nadel, Federal Communications Commission, 1919 M Street NW., Room 542, Washington, D.C. 20554
Gary Oddi, Federal Communications Commission, 2000 L Street NW., Suite 257, Washington, D.C. 20036
Teresa Pitts, Washington Utilities and Transportation Commission, P.O. Box 47250, Olympia, WA 98504–7250
Jeanine Poltronieri, Federal Communications Commission, 2000 L Street NW., Suite 257, Washington, D.C. 20036
James Bradford Ramsay, National Association of Regulatory Utility Commissioners, 1201 Constitution Avenue NW., Washington, D.C. 20423
Jonathan Reel, Federal Communications Commission, 2000 L Street NW., Suite 257, Washington, D.C. 20036
Brian Roberts, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102–3298
Gary Seigel, Federal Communications Commission, 2000 L Street NW., Suite 812, Washington, D.C. 20036
Pamela Szymczak, Federal Communications Commission, 2000 L Street NW., Suite 257, Washington, D.C. 20036
Whiting Thayer, Federal Communications Commission, 2000 L Street NW., Suite 812, Washington, D.C. 20036
Deborah S. Waldbaum, Colorado Office of Consumer Counsel, 1580 Logan Street, Suite 610, Denver, Colorado 80203
Alex Belinfante, Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554
Larry Povich, Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554.

[FR Doc. 96–6156 Filed 3–11–96; 4:11 pm]
BILLING CODE 6712–01–P

47 CFR Parts 43, 63, 64, and 65

[CC Docket No. 96–23, FCC 96–64]

Revision of Filing Requirements

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this Notice of Proposed Rulemaking, the Commission proposes to eliminate thirteen reporting requirements and to reduce the frequency of six other reporting requirements. These reporting requirements are variously applicable to interexchange carriers, Bell Operating Companies, other local telephone companies, and record carriers. These proposed actions will improve the quality of information available to the Commission, while at the same time reducing the reporting burdens imposed on carriers.

DATES: Comments must be submitted on or before April 8, 1996. Reply Comments must be filed on or before April 23, 1996. Written comments by the public on the proposed and/or modified information collections are due on or before April 8, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before May 13, 1996.

ADDRESSES: Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Nasir Khilji of the Common Carrier Bureau, 2033 M Street, N.W., Room 500F, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, N.W., Washington, DC 20503 or via the Internet to fain—t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Nasir Khilji (202) 418–0958, Common Carrier Bureau, Industry Analysis Division. For additional information concerning the information collections contained in this NPRM contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

Synopsis of Notice of Proposed Rulemaking

This is a synopsis of the Commission's Notice of Proposed Rulemaking in CC Docket No. 96–23, adopted February 20, 1996, and released February 27, 1996. The full text of this Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 230, 1919 M Street, N.W., Washington, D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 1400, Washington, D.C. 20037 (telephone (202) 857–3800).

Paperwork Reduction Act: This NPRM contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due 60 days from date of publication of this NPRM in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's 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.

OMB Approval Number: None.

Title: Revision of Filing requirements.

Form No.: FCC Report 43.05, FCC 492.

Type of Review: New Collection.

Respondents: Business or other for profit.

Title	No. of respondents	Estimated time per response	Total annual burden
1. Circuit Report	0	0	0
2. Record Carrier Letter	0	0	0
3. Report on Inside Wiring Services	0	0	0
4. ARMIS Service Quality Report, FCC Report 43–05	27	833	44,982
5. FCC 492, Rate of Return Report	35	8	280
6. New Service Tracking Report	16	20	104
7. Report of Unsecured Credit to Political Candidates	13	8	104

Total Annual Burden: 45,686.

Needs and Uses: The Commission proposes to eliminate thirteen reporting requirements and to reduce the frequency of six reporting requirements variously applicable to Regional Bell Operating Companies, other local telephone companies, record carriers, AT&T, and Sprint. The requirements identified above are subject to the Paperwork Reduction Act of 1995. The information received will be used to assist the Federal Communications Commission in performing its public oversight duties.

I. Summary and Background

1. As part of the President's Regulatory Reform Initiative, each federal agency was asked to lessen the regulatory burden on the public by reducing the amount of information the public must provide each agency.

2. The Commission conducted a review of all reports filed with the Common Carrier Bureau, including reports not subject to the Paperwork Reduction Act. As a result of that review, the Commission identified reporting requirements that can be eliminated or be reduced in frequency. The Commission proposed to eliminate or reduce in frequency the following reports:

II. Elimination of Reports

3. Divestiture Reports: On June 14, 1995, the Bureau issued a Public Notice (''Common Carrier Bureau Solicits Comments on Elimination of Divestiture Reports,'' Public Notice CC 95–34, June 14, 1995) soliciting comments on the need to continue several reports established at the time of the AT&T divestiture [96 FCC 2d 18 (1983), modified, 98 FCC 2d 141 (1984)], that the Bureau determined no longer met the intended monitoring requirements. As a result of the Bureau's review of regulations and reporting requirements and the favorable comments filed pursuant to the Public Notice, the Commission proposed to eliminate the following reports:

A. Equal Access Progress Report: This report is submitted semi-annually by AT&T and Regional Holding Companies under Condition 3, AT&T Divestiture Order.

B. Construction Budget Summary: Condition 10 of the AT&T Divestiture Order required AT&T and Regional Holding Companies to submit an annual financial summary of telecommunications facility construction activity.

C. National Security and Emergency Preparedness Effectiveness: This report is submitted annually by AT&T and Bellcore under Condition 12, AT&T Divestiture Order. It lists activities by the carriers to support national security.

4. AT&T Customer Premises Equipment (CPE) Installation and Maintenance Report: This report is submitted quarterly by AT&T pursuant to *Furnishing of Customer Premises Equipment and Enhanced Services by American Telephone and Telegraph Co.* [102 FCC 2d 655, (1985), also 104 FCC 2d 739, (1986)]. The report contains the percentage of lines/circuits not installed by the relevant due date for telephone company reasons, as well as the percentage of lines/circuits ordered by unaffiliated vendors. The original purpose of the report was to protect competitors by monitoring AT&T's installation and maintenance of lines/circuits to ensure that it is not discriminating against unaffiliated CPE vendors. In 1991, the Commission eliminated nondiscrimination reporting for those AT&T network services subject to maximum streamlined regulation. In 1993, the Commission added AT&T's 800 services to the list of services subject to streamlined treatment. Since December 1993, AT&T has only provided installation and maintenance nondiscrimination reports regarding CPE and enhanced services for analog private line services. Because customer use of such services has diminished with the increasing introduction of digital applications, there has been very little reporting activity since 1993. Therefore, the Commission proposed to eliminate nondiscrimination reporting requirements regarding both CPE and enhanced services with respect to the few AT&T services still subject to them.

5. AT&T Service Quality: Equipment Blockage and Failure Report: This semi-annual report is submitted by AT&T pursuant to Policies and Rules Regarding Rates for Dominant Carriers [6 FCC Rcd. 2974, (1991)]. The report's objective was to provide the Commission the means to monitor and ensure that service quality at equal access exchanges is comparable to service quality at non-equal access exchanges. Because at the end of 1994, approximately 98% of the nation's lines had been converted to equal access (in contrast to 86% in 1989), this report is no longer relevant for the purposes originally intended. Therefore the Commission proposed to eliminate it.

6. AT&T Nondiscrimination Report for Enhanced Services Providers: AT&T submits this report on a quarterly basis pursuant to Amendment of Section 64.702 of the Commission's Rules and Regulations, (''Third Computer Inquiry'') [52 FR 20714, June 3, 1987]. In these reports, AT&T must compare the level of service provided to enhanced service affiliates with that provided to enhanced service competitors. As discussed above, following the Commission's orders streamlining the regulation of AT&T's services, very few AT&T services remain subject to enhanced services nondiscrimination reporting, and those few are so rarely used that this reporting requirement was proposed to be eliminated.

7. BOC Customer Premises Equipment (CPE) Installation and Maintenance Report; BOC Customer Premises Equipment Affidavits for Non-Discriminatory Provision of Network Maintenance: The BOC CPE installation and maintenance report is a quarterly report required by Furnishing of Customer Premises Equipment by the Bell Operating Telephone Companies and the Independent Telephone Companies [52 FR 2226, January 21, 1987]. The Report compares the number and/or percentage of lines/circuits not installed by the BOC by the requested date for affiliated and unaffiliated CPE vendors, so that the FCC may monitor whether the BOCs are discriminating

against unaffiliated CPE vendors with respect to installation and maintenance. As an alternative to submitting a quarterly CPE maintenance report described above, a BOC may instead submit an annual affidavit certifying that it has not discriminated in the provision of network installation and maintenance. The Commission originally adopted this alternative maintenance certification scheme in the belief that it was unlikely that BOCs could or would discriminate based on the identity of the CPE vendor in providing network maintenance services.

8. In the eight years since the Commission established the foregoing nondiscrimination reporting and alternative affidavit requirements, the Commission received no formal complaints from any party alleging unlawful discrimination by a BOC in the provision of installation and maintenance services. The Commission proposed the elimination of these requirements in light of regulatory alternatives and burdens imposed on carriers and solicited comment on the costs and benefits of eliminating the foregoing requirements.

9. BOC Sales Agency Program and Vendor Support Program Report: This report is submitted annually by each BOC pursuant to the *BOC CPE Relief Order* [2 FCC Rcd 156]. The report contains information on the Bell Operating Companies' sales agency programs and vendor sales activity. The original purpose of the report was to ensure that the BOCs provide independent CPE vendors with meaningful opportunities to market their CPE jointly with BOC network services. At the present time, these sales agency reports are not generally used by independent CPE vendors, and that, therefore, they may not as a practical matter serve the purposes for which they were intended. Accordingly, the Commission proposed to eliminate the requirement to file these reports.

10. Billing and Collection Contracts: This report is submitted by local exchange carriers (LECs) on an as-needed basis pursuant to the Common Carrier Bureau's Public Notice released in CC Docket No. 85–88 [2 FCC Rcd 809 (Com. Car. Bur. 1987)]. Each LEC provides a list of all billing and collection contracts under which it provides such services. From time to time as necessary, the LEC updates the list on file with the Commission. As LECs previously enjoyed a virtual monopoly on certain information necessary for the billing and collection of end-users, this service was in the past subject to tariff. However, as non-LECs gained access to such information and the service became more competitive, the Commission relaxed the tariff requirement and simply required these LECs to file lists of those contracts. Because such lists are seldom used by the staff or the public the Commission proposed to eliminate this reporting requirement entirely.

11. Circuit Report: Section 63.07(b) of the rules requires non-dominant carriers that construct or acquire initial or additional circuits to file a report concerning these circuits semi-annually on February 1 and August 1 of each year. These reports provide information on interstate communications facilities constructed and operated by nondominant carriers. This information permits the Commission to perform a public interest assessment of the facilities investments of these carriers, as envisioned in its Competitive Carrier Proceeding [45 FR 76148, November 18, 1980]. As a practical matter, it is no longer necessary to require these reports on a routine basis from all nondominant carriers. Instead, the Commission can obtain this information in individual instances when a direct regulatory need for it arises. Accordingly, the Commission proposed the elimination of the present requirement that nondominant carriers file semi-annual circuit reports.

12. Record Carrier Letter: Each record carrier with operating revenues over $75 million for a calendar year is required, under Section 43.21(d) of the Commission's Rules, to file a letter showing selected balance sheet and income items for that year with the Common Carrier Bureau Chief. The financial statement summary provides an indication of record carrier business. In the 1950s, 80 percent of international traffic was handled by record carriers. In 1994 this report was filed by two carriers representing 2 percent of the market. For 1995 it is anticipated that only one carrier will file. The Commission tentatively concluded that this report was no longer needed and proposed to eliminate it.

13. Report on Inside Wiring Services: This report is submitted by each local exchange carrier with annual operating revenues of $100 million or more under Section 43.41 of the Commission's Rules. This rule applies only to the local exchange carrier serving the greatest number of access lines within the portions of the state that are, or would be, subject to the state regulation.

14. The report contains copies of any state or local statute, order, rule, law or other documents that regulate or propose to regulate local exchange carrier prices for inside wiring services. This reporting requirement was established to gain information about regulations at the state level and their potential impact on federal wiring policy. The Commission sought comment on eliminating this report.

III. Reduction of Reporting Frequency

15. Armis Service Quality Report 43–05: These reports are submitted quarterly by every local exchange carrier for which price cap regulation is mandatory and for every local exchange carrier that elects to be covered by the price cap rules. This report was established to enable the Commission to observe the success of incentive regulation and to become aware of any reduction of service quality or infrastructure investment. The states have been increasingly active in monitoring the quality of service. The Commission concluded that there was no need to require this report on a quarterly basis and proposed requiring the report to be submitted semi-annually.

16. Form 492: Rate of Return Report: This report is submitted quarterly by non price cap companies (Non Price Cap LECS) and NECA. The report is one page in length and contains total revenues, total expenses and taxes, operating income and the rate base for each company. While the Commission felt that the data was still needed to ensure that non price cap companies do not exceed the authorized rate of return, it determined that this purpose could also be accomplished by reducing the report's frequency. The Commission proposed requiring this report annually.

17. Joint Board Monitoring Program—Pooling: This report is submitted by NECA on a monthly (summary of pool results), and an annual (long term support) basis under Sections 69.605 and 69.612 of the Commission's Rules. The report contains NECA pooling data and long-term support data. It was established to keep track of subsidy flows and administrative costs of administering the subsidies. These purposes can still be accomplished by quarterly submissions. The Commission therefore proposed to reduce the frequency of this report to a quarterly submission.

18. New Service Tracking Report: This report is submitted quarterly by LECs subject to price cap regulation, under requirements imposed by the Commission. These reports are employed to conduct studies to determine reliability of price cap carrier new service projections. The Commission determined that while the data was still needed, this purpose could be accomplished by reducing the

reporting frequency. Therefore, it proposed reducing the frequency of this submission to an annual report.

19. Payphone Compensation: This report is required to be submitted quarterly by AT&T and Sprint under a waiver granted in connection with CC Docket No. 91–35 [CC Docket No. 91–35, 10 FCC Rcd 1590 (1994); 10 FCC Rcd 5490 (1995)]. The report consists of a brief paragraph delineating the names and amounts of compensation paid to private payphone operators for interstate traffic that originated from those payphones. This requirement was established to monitor pay-phone compensation paid on a different basis than that provided for in the Docket. This report will only be needed until the conclusion of the payphone compensation rulemaking within the next two years and the burden is minimal. The Commission determined that the frequency of this report could be reduced and proposed a semi-annual submission.

20. Report of Unsecured Credit to Political Candidates: This report is submitted semi-annually by all carriers having operating revenues in excess of $1 million for the preceeding year. It shows, by account, any amount due and unpaid as of the end of the month prior to the reporting date for interstate and for communications services rendered by or on behalf of candidates for Federal office, when such amount results from the extension of unsecured credit. The reporting requirement was established pursuant to Section 401 of the Federal Election Campaign Act of 1971. This report serves as a check on the implied contributions by carriers to candidates for Federal office. The Commission solicited comment on whether a reduced frequency could accomplish the same objective. It proposed to reduce the frequency of this report and instead require that it be submitted annually if there was a reasonable basis in the record for concluding that this would sufficiently meet the purposes of the Federal Election Campaign Act of 1971.

IV. Procedural Rules

21. The Commission believed that it would facilitate resolution of the issues raised in this proceeding to provide that the Chief, Common Carrier Bureau, acting pursuant to delegated authority, would determine whether to adopt the proposals set forth in this Notice of Proposed Rulemaking. It delegated to the Chief of the Common Carrier Bureau the authority to issue any necessary reports or orders arising from this rulemaking proceeding. Therefore, in that regard, it waived, for this proceeding only, Section 0.291(h) of the Commission's Rules, 47 CFR 0.291(h), which prohibits the Chief of the Common Carrier Bureau from issuing reports or orders arising from a proposed rulemaking.

22. Initial Regulatory Flexibility Analysis. This was not required as there were no small entities affected by the proposals described in this document.

23. *Ex Parte* Rules Non-Restricted Proceeding. This is a non-restricted notice and comment rulemaking. See 47 CFR 1.399 *et seq.* Ex Parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

24. Comment Filing Dates. Pursuant to applicable procedures set forth in Sections 1.399 and 1.411 *et seq.* of the Commission's rules, 47 CFR 1.399 and 1.411 *et seq.*, interested parties may file comments with the Secretary, Federal Communications Commission, Washington, D.C. 20554 on or before April 8, 1996, and reply comments on or before April 23, 1996. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Room 140, 2100 M Street N.W., Washington, D.C. 20037. Parties should also submit one copy of any documents filed in this docket with Nasir Khilji, Industry Analysis Division, Common Carrier Bureau, Room 500F, 2033 M Street, N.W., Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

V. Ordering Clauses

25. Accordingly, *it is ordered*, pursuant to Sections 1, 4(i), 4(j), 201–205, 218, 226, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 218, 226, 303(r), that a Notice of Proposed Rule Making is issued, proposing the amendment of various Commission's rules as set forth below.

26. *It is further ordered*, that the Chief of the Common Carrier Bureau is delegated authority to issue any necessary reports or orders arising from this rulemaking proceeding. *It is further ordered*, that for this proceeding and for the purposes described above, Section 0.291(h) of the Commission's Rules, 47 CFR 0.291(h), *waived*.

27. *It is further ordered*, That the Secretary shall mail a copy of this Notice of Proposed Rule Making to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 603(a). The Secretary shall also cause a summary of this Notice to appear in the Federal Register.

List of Subjects

47 CFR Part 43

Communications common carriers, Reporting and recordkeeping requirements, Telegraph, Telephone.

47 CFR Part 63

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

47 CFR Part 64

Communications common carriers, Reporting and recordkeping requirements, Telephone, Credit, Political candidate.

47 CFR Part 65

Communications common carriers, Reporting and record-keeping requirements, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Parts 43, 63, 64, and 65 of title 47 of the code of federal regulations are proposed to be amended as follows:

PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

1. The authority citation for Part 43 continues to read as follows:

Authority: Sections 4(i), 4(j), 201–205, 303(r) and 403 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 201–205, 303(r), 403, unless otherwise noted.

2. Paragraph (d) of § 43.21 is revised to read as follows:

§ 43.21 Annual reports of carriers and certain affiliates.

* * * * *

(d) Each miscellaneous common carrier (as defined by § 21.1 of this chapter) with operating revenues over $100 million for a calender year shall file with the Common Carrier Bureau Chief a letter showing its operating revenues for that year and the value of

its total communications plant at the end of that year. This letter must be filed by March 31 of the following year.

* * * * *

3. Section 43.41 is removed and reserved.

PART 63—EXTENSION OF LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIER; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

4.The authority citation for Part 63 continues to read as follows:

Authority: Sections 4(i), 4(j), 201–205, 303(r) and 403 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 201–205, 303(r), 403, unless otherwise noted.

5. Section 63.07 is amended by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

6. The authority citation for Part 64 continues to read as follows:

Authority: Sections 4(i), 4(j), 201–205, 303(r) and 403 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 201–205, 303(r), 403, unless otherwise noted.

7. Section 64.804 is amended by revising the first sentence of introductory paragraph (g) to read as follows:

§ 64.804 Rules governing the extension of unsecured credit to candidates or persons on behalf of such candidates for Federal office for interstate and foreign common carrier communication services.

* * * * *

(g) On or before January 31, 1997, and the corresponding date of each year thereafter, each carrier which had operating revenues in the preceeding year in excess of $1 million shall file with the Commission a report by account of any amount due and unpaid, as of the end of the month prior to the reporting date, for interstate and foreign communication services rendered to a candidate or person on behalf of such candidate when such amount results from the extension of unsecured credit.* * *

* * * * *

PART 65—INTERSTATE RATE OF RETURN PRESCRIPTION PROCEDURES AND METHODOLOGIES

8. The authority citation for Part 65 continues to read as follows:

Authority: Sections 4(i), 4(j), 201–205, 303(r) and 403 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 201–205, 303(r), 403, unless otherwise noted.

9. Section 65.600 is amended by revising paragraph (b) to read as follows:

§ 65.600 Rate of return reports.

* * * * *

(b) Each local exchange carrier or group of affiliated carriers which is not subject to §§ 61.41 through 61.49 of this chapter and which has filed individual access tariffs during the preceding enforcement period shall file with the Commission within three (3) months after the end of each calender year, an annual rate of return monitoring report. Each report shall contain two parts. The first part shall contain rate of return information on a cumulative basis from the start of the enforcement period through the end of the year being reported. The second part shall contain similar information for the most recent year. The final annual monitoring report for the entire enforcement period shall be considered the enforcement period report. Reports shall be filed on the appropriate report form prescribed by the Commission (see § 1.795 of this chapter) and shall provide full and specific answers to all questions propounded and information requested in the currently effective report form. The number of copies to be filed shall be specified in the applicable report form. At least one copy of the report shall be signed on the signature page by the responsible officer. A copy of each report shall be retained in the principal office of the respondent and shall be filed in such manner as to be readily available for reference and inspection. Final adjustments to the enforcement period report shall be made within fifteen (15) months following the enforcement period to ensure that any refunds can be properly reflected in an annual access filing.

* * * * *

[FR Doc. 96–6199 Filed 3–13–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Chapter X

[STB Ex Parte No. 538]

Disclosure and Notice of Change of Rates and Other Service Terms for Pipeline Common Carriage

AGENCY: Surface Transportation Board, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The ICC Termination Act of 1995 (ICCTA) eliminated the tariff and tariff filing requirements formerly applicable to pipeline carriers, but imposed in lieu thereof certain obligations to disclose common carriage rates and service terms as well as a requirement for advance notice of an increase in such rates or change in service terms. ICCTA requires the Board to promulgate regulations to administer these new obligations by June 29, 1996. The Board seeks public comment on appropriate regulations for that purpose, and encourages the affected interests groups to discuss and seek mutually agreeable regulations to propose.

DATES: Comments are due on April 15, 1996.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte No. 538 to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423.

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

SUPPLEMENTARY INFORMATION: The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (ICCTA), enacted on December 29, 1995, abolished the Interstate Commerce Commission (ICC) and transferred the responsibility for the economic regulation of pipeline transportation (of commodities other than water, gas, or oil) to a new Surface Transportation Board (the Board). *See* ICCTA Section 101 (abolition of the ICC). *See also* new 49 U.S.C. 701(a) (establishment of the Board), as enacted by ICCTA Section 201(a). The transfer took effect on January 1, 1996. *See* ICCTA Section 2 (effective date).[1]

The substantive provisions of the new law differ in several important respects from the former law. As pertinent here, the former law required that pipeline carriers (of commodities other than water, gas, or oil) file with the ICC tariffs containing the specific rates and charges (or the basis for calculating them) for their common carriage transportation services. Pipeline carriers had to adhere to the rates and terms contained in their tariffs. *See* former 49 U.S.C. 10761 and 10762. *See also* 49 CFR Part 1312 (1995).

The ICCTA eliminated the pipeline tariff requirements, effective January 1, 1996. Accordingly, no new pipeline

[1] ICCTA also made several changes to the pipeline regulatory authority that had been exercised by the ICC. In this notice, when referring to the provisions of the United States Code affected by ICCTA we use the word former to refer to the law in effect prior to January 1, 1996, and the word new to refer to the law in effect on and after January 1, 1996.

carrier tariffs are to be filed with the Board, and the pipeline carrier tariffs that were previously filed with the ICC are no longer effective tariffs as of January 1, 1996. The ICC regulations at 49 CFR Part 1312 are likewise not effective with respect to transportation provided by a pipeline carrier on and after that date.

Nevertheless, new 49 U.S.C. 15701 requires both disclosure of pipeline common carriage rates and service terms and advance notice of certain changes therein. (These requirements, it must be noted, apply only to transportation by pipeline of commodities other than water, gas, or oil). In particular, new 49 U.S.C. 15701(b) requires disclosure of pipeline common carriage rates and service terms, new 49 U.S.C. 15701(c) requires that pipeline carriers, when providing common carriage, not increase their rates or change their service terms without advance notice, and new 49 U.S.C. 15701(d) requires pipeline carriers to adhere to the rates and service terms published or otherwise made available under new 49 U.S.C. 15701(b) and/or (c).[2]

New 49 U.S.C. 15701(e) directs the Board to establish rules to implement the requirements of new 49 U.S.C. 15701. In accordance with this directive, we intend to promulgate new regulations to implement the requirements of new 49 U.S.C. 15701(b) and (c). We do not believe that implementing rules are required for new 49 U.S.C. 15701(a), which simply reenacts the longstanding common carrier obligation that the carrier provide transportation or service on reasonable request. We believe that this obligation, which has been well developed through case law, is best addressed on a case-by-case basis.

Similarly, our preliminary view is that implementing rules are not required for new 49 U.S.C. 15701(d), which requires a pipeline carrier to provide transportation or service in accordance with the rates and service terms, and any changes thereto, as published or otherwise made available under new 49 U.S.C. 15701(b) or (c). This requirement appears to be clear on its face.

The regulations implementing new section 15701 would appear to apply to any transportation or service provided by a pipeline carrier subject to our jurisdiction under new 49 U.S.C. 15301, with one exception. They would not apply, it would seem, to transportation or service provided by a pipeline carrier covered by an exemption issued under new 49 U.S.C. 15302, to the extent that such exemption applies to rate notice and disclosure requirements. We would also again point out that, under new 49 U.S.C. 15301, the Board has jurisdiction over transportation by pipeline, or by pipeline and either railroad or water, only as respects the transportation of commodities other than water, gas, or oil.

The new regulations would first need to address the requirement of new 49 U.S.C. 15701(b) that a pipeline carrier promptly provide to any person, on request, its rates and other service terms. It would appear that this requirement applies both to the disclosure of an existing rate (and related service terms) and to the establishment of a new rate (and related service terms) where none exists.

In the situation where the carrier has existing rates covered by the rate information request, the provisions of 49 U.S.C. 15701(b) and (e) require the carrier ''immediate[ly]'' to disclose its ''rates and service terms, including classifications, rules, and practices'' to any person requesting such information. We seek suggestions for a rule that would implement these provisions in a way that would provide the rate requestor with complete information about all relevant terms and conditions. We also seek input on whether we should attempt to define the word immediately, or instead should simply establish general guidelines to be applied on a case-by-case basis, setting up broad parameters governing disclosure.

There may be instances in which a shipper or prospective shipper requests the carrier to establish a rate for a type of traffic for which no existing rate is in place. Again, the provisions of 49 U.S.C. 15701(b) appear to require that the pipeline carrier provide a rate, as well as any related charges and service terms, promptly. We seek input on whether we ought to define the word promptly, or instead should simply adopt broadly applicable guidelines.

The new regulations also need to address the requirement of new 49 U.S.C. 15701(c) that a pipeline carrier may not increase a common carriage rate or change a common carriage service term without first giving 20 days' notice to any person who, within the previous 12 months, (1) has requested that rate or term under new subsection (b), or (2) has made arrangements with the carrier for a shipment that would be subject to the increased rate or changed term. It seems to us that the advance notice requirement would apply to known users of the transportation or service to which the increase or change is applicable (i.e., a person who has made a shipment within the past year or has already made arrangements for a future shipment) and also to known prospective users of such transportation or service (i.e., a person who has requested that rate to be established). Our preliminary view is that it would not be necessary or appropriate to require a carrier to keep a record of and notify all persons who have requested rate information but are not users of the affected transportation service. We request comment on what guidance, if any, should be given for determining which members of the shipping public are covered by the 20-day notice period.

We note that the notice requirement does not apply to a rate decrease, which a carrier may apply without notice. Similarly, it would not seem that the notice requirement should apply to, and hence delay, a change in service terms that is clearly beneficial to shippers. Our initial view is that it is not necessary to establish rules addressing how to determine whether a service change is clearly beneficial to shippers. Commenters may wish to address this issue.

Finally, the new regulations should provide for the required information to be supplied either in writing or in electronic form. It would appear that the form chosen would depend upon the technical capacities of the carrier to transmit, and of the requestor to receive, the information.

Request for Comments

We invite all interested persons to comment and to offer suggestions for the new regulations. Commenters may wish to address, among other things, whether we should exercise our authority under new 49 U.S.C. 15701(e) to modify the 20-day advance notice period provided by new 49 U.S.C. 15701(c).

We encourage affected interest groups to discuss the new requirements with each other and to seek a mutually agreeable set of regulations that would meet the needs of all affected interests—both shipper and carrier, and both large and small.

Comments (an original and 10 copies) must be in writing, and are due on April 15, 1996.

We encourage any commenter that has the necessary technical wherewithal to submit its comments as computer

[2] A central feature of both the former and new law is the requirement that a pipeline carrier adhere to its established rates. Therefore, as a transition matter, a question that arises is whether a pipeline carrier must continue to adhere to its established rates and service terms—those that were in effect (in tariffs on file with the ICC) on December 31, 1995—unless and until changed in a manner consistent with the requirements of new section 15701. Otherwise, it could be argued that there could be a break in the continuity of rates that Congress did not intend.

data on a 3.5-inch floppy diskette formatted for WordPerfect 5.1, or formatted so that it can be readily converted into WordPerfect 5.1. Any such diskette submission (one diskette will be sufficient) should be in addition to the written submission (an original and 10 copies).

Small Entities

Because this is not a notice of proposed rulemaking within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we need not conduct at this point an examination of impacts on small entities. We will certainly welcome, of course, any comments respecting whether regulations that commenters may suggest would have significant economic effects on any substantial number of small entities.

Environment

The issuance of this advance notice of proposed rulemaking will not significantly affect either the quality of the human environment or the conservation of energy resources. Furthermore, we would not expect that regulations suggested for implementing new 49 U.S.C. 15701 would significantly affect either the quality of the human environment or the conservation of energy resources. We certainly welcome, of course, any comments respecting whether suggested regulations would have any such effects.

Authority: 49 U.S.C. 721(a) and 15701.

Decided: March 6, 1996.

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

Vernon A. Williams,

Secretary.

[FR Doc. 96–6086 Filed 3–13–96; 8:45 am]

BILLING CODE 4915–00–P

Federal Railroad Administration

49 CFR Part 214

[FRA Docket No. RSOR 13, Notice No. 6]

RIN 2130–AA86

Roadway Worker Protection

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: FRA proposes rules for the protection of railroad employees working on or near railroad tracks. This regulation would require that each railroad devise and adopt a program of on-track safety to provide employees working along the railroad with protection from the hazards of being struck by a train or other on-track equipment. Elements of this on-track safety program would include an on-track safety manual; a clear delineation of employers' responsibilities for providing on track safety, as well as employees' rights and responsibilities related thereto; well defined procedures for communication and protection; and annual on-track safety training. The program adopted by each railroad would be subject to review and approval by FRA.

DATES: (1) Written comments must be received no later than May 13, 1996. Comments received after that date will be considered to the extent possible without incurring additional expense or delay. Requests for formal extension of the comment period must be made by April 29, 1996.

(2) Requests for a public hearing must be made by April 15, 1996.

ADDRESSES: Written comments should be submitted to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590. Persons wishing notification that their comments have been received should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the comment period closes, during regular business hours in Room 8201 of the Nassif Building located at the address listed above. Any person interested in requesting a hearing should contact the Docket Clerk at (202) 366–2257.

FOR FURTHER INFORMATION CONTACT: Gordon A. Davids, P.E., Bridge Engineer, Office of Safety, FRA, 400 Seventh Street SW., Washington, DC 20590 (telephone: 202–366–0507); Phil Olekszyk, Deputy Associate Administrator for Safety Compliance and Program Implementation, FRA, 400 Seventh Street SW., Washington, DC 20590 (telephone: 202–366–0897); or Cynthia Walters, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street SW., Washington, DC 20590 (telephone: 202–366–0621).

SUPPLEMENTARY INFORMATION:

Comments and Hearing

In accordance with Executive Order 12866, FRA is allowing 60 days for comments. FRA believes that a 60 day comment period is necessary for parties with interests that were not represented on the Advisory Committee. Public hearings are generally held to provide interested parties an opportunity for oral presentations of data, views, or arguments concerning the proposed standards. Proceeding pursuant to regulatory negotiation has allowed participation by the public and a public hearing will only be scheduled, if requested.

Introduction

Background

Concern regarding hazards faced by roadway workers has existed for many years. The FRA received a petition to amend its track safety standards from the Brotherhood of Maintenance of Way Employees (BMWE) in 1990, which included issues pertaining to the hazards faced by roadway workers. This proceeding, however, formally originated with the Rail Safety Enforcement and Review Act, Public Law No. 102–365, 106 Stat. 972, enacted September 3, 1992, which required FRA to review its track safety standards and revise them based on information derived from that review. FRA issued an Advanced Notice of Proposed Rulemaking (ANPRM) on November 16, 1992 (57 FR 54038) announcing the opening of a proceeding to amend the Federal Track Safety Standards.

Workshops were held in conjunction with this effort, to solicit the views of the railroad industry and representatives of railroad employees on the need for substantive change in the track regulations. A workshop held on March 31, 1993 in Washington, D.C., specifically addressed the protection of employees from the hazards of moving trains and equipment. The subject of injury and death to roadway workers was of such great concern that FRA received petitions for emergency orders and requests for rulemaking from both the Brotherhood of Maintenance-of-Way Employees and the Brotherhood of Railroad Signalmen. FRA did not grant the petitions for emergency orders, but instead initiated a separate proceeding to consider regulations to eliminate hazards faced by these employees. FRA removed this issue from the track standards docket, FRA Docket No. RST–90–1 and established a new docket, FRA Docket No. RSOR 13, specifically to address hazards to roadway workers to expedite the effective resolution of this issue.

FRA also determined that standards addressing this issue would be more closely related to workplace safety than to standards addressing the condition of railroad track. Since Railroad Workplace Safety is addressed in 49 CFR Part 214, standards issued for the protection of

roadway workers would be better categorized in this section, than Part 213, Track Safety Standards. Accordingly, the minimum standards proposed in this notice would amend Part 214 of Title 49, Code of Federal Regulations by adding a new subpart, Subpart C, addressing hazards to roadway workers.

FRA convened a Safety Summit Meeting on June 3, 1994 with affected railroad industry, contractor, and labor representatives. This meeting considered certain aspects of FRA accident data involving roadway workers. The meeting also facilitated a discussion of various short-term and long-term actions that could be taken by FRA and the industry to prevent injuries and deaths among roadway workers. One long-range alternative suggested by FRA was to use the negotiated rulemaking process to allow input from both railroad management and labor to develop standards addressing this risk. The agency determined that this was an appropriate subject for a negotiated rulemaking, and initiated this process.

FRA published its notice of intent to establish a Federal Advisory Committee for regulatory negotiation on August 17, 1994 (59 FR 42200). This notice stated the purpose for the Advisory Committee, solicited requests for representation on the Advisory Committee, and listed the key issues for negotiation. Additionally, the notice summarized the concept of negotiated rulemaking including an explanation of consensus decision making. The Advisory Committee would be responsible for submitting a report, including an NPRM, containing the Committee‘s consensus decisions. If consensus was not reached on certain issues, the report would identify those issues and explain the basic disagreement. Pursuant to negotiated rulemaking, FRA committed the agency to issue a proposed rule as recommended by the committee unless it was inconsistent with statutory authority, agency or legal requirements, or if in the agency‘s view the proposal did not adequately address the subject matter. FRA agreed to explain any deviations from the committee‘s recommendations in the NPRM.

FRA established an Advisory Committee in accordance with the Federal Advisory Committee Act, 5 U.S.C. 581, based on the response to its notice. On December 27, 1994, the Office of Management and Budget approved the Charter to establish a Roadway Worker Safety Advisory Committee, enabling the committee to begin negotiations. FRA announced the establishment of this Advisory Committee, with the first negotiating session to be held on January 23–25, 1995 (60 FR 1761). FRA chose the Federal Mediation and Conciliation Service to mediate these sessions, and administrative support was acquired to carry out organizational and record keeping functions.

The twenty-five member Advisory Committee was comprised of representatives from the following organizations:

American Public Transit Association (APTA)
The American Short Line Railroad Association (ASLRA)
Association of American Railroads (AAR)
Brotherhood of Locomotive Engineers (BLE)
Brotherhood of Locomotive Engineers, American Train Dispatchers Department (ATDD)
Brotherhood of Maintenance of Way Employees (BMWE)
Brotherhood of Railroad Signalmen (BRS)
Burlington Northern Railroad (BN)
Consolidated Rail Corporation (Conrail)
CSX Transportation, Inc. (CSX)
Florida East Coast Railway Company (FEC)
Federal Railroad Administration (FRA)
Northeast Illinois Regional Railroad Corporation (METRA)
National Railroad Passenger Corporation (AMTRAK)
Norfolk Southern Corporation (NS)
Regional Railroads of America (RRA)
Transport Workers Union of America (TWU)
Union Pacific Railroad Company (UP)
United Transportation Union (UTU)

The Advisory Committee held 7 multiple-day negotiating sessions that were open to the public, as prescribed by the Federal Advisory Committee Act, 5 U.S.C. 581. In an effort to assist this proceeding, information was presented at the first Advisory Committee meeting by committee members who had participated earlier in an independent task force. This task force, comprised of representatives of several railroads and labor organizations, had met during the preceding year to independently analyze the issue of on-track safety. The findings and recommendations of the task force were considered along with information presented by other Advisory Committee members.

The Advisory Committee reached consensus on 11 specific recommendations and 9 general recommendations to serve as the basis for a regulation. These recommendations were incorporated into a report that was submitted to the Secretary of Transportation and the Federal Railroad Administrator on May 17, 1995. This report did not include an NPRM, as originally conceived, but established the basis for the proposed rule, which is the subject of this notice.

The Advisory Committee held one additional two-day session, and reached consensus on a proposed rule that conformed to the recommendations submitted in their report. The Committee recommended that FRA publish that document as a proposed Federal regulation and continue the rulemaking procedures necessary to adopt its principles in a final rule. The differences in substance between this proposed rule and that recommended by the Advisory Committee are enumerated below, with the reasons therefore.

Safety Issues

Early Efforts

FRA attempted to analyze the safety concerns, known risks, and prevention methods during the March, 1993 workshop. Information derived from that workshop focused the agency’s efforts. Discussions indicated that major carriers, regional railroads, short lines, and commuter railroads had rules addressing the hazards associated with working on and near railroad track. Railroad representatives at the workshop explained the safety procedures used on their respective properties, including the use of watchmen, protection from trains on adjacent tracks, use of radios, establishing working limits, use of line-ups, slowing the speed of trains, protection while using maintenance of way equipment, training, efficiency testing, and other related topics. The concept of allowing workers the right to question the system set up for their protection was also introduced into the discussion.

FRA presented information from its data base regarding employee fatalities for the years 1988 through 1993 and attempted to categorize the risks associated with these fatalities. FRA identified 23 accidents resulting in fatalities and categorized these accidents into 6 groups: employees struck by a train on live track while not directly engaged in work, accounting for 11 fatalities; employees struck by a train while directly engaged in work, accounting for 3 fatalities; employees struck by a train or rolling stock moving without authority, accounting for one fatality; employees who fell from track machines, accounting for 2 fatalities; employees struck by moving track machinery, accounting for 5 fatalities; and improper machine operation, accounting for one fatality.

Although there was disagreement regarding FRA’s designation of certain accidents as belonging in certain categories, the discussion successfully delineated the risks affecting workers and whether carrier rules would have applied. This initial attempt to

categorize accident data provided the framework for additional analysis of the safety problem. The following emerged:

A. Persons Affected by This Rule

One topic discussed was the scope of the population of employees exposed to this risk. Attention was focused on terminology that would appropriately describe the population of employees who were at risk of death or injury while working on or about the track. All participants agreed that the risk of injury or death to those working on or about track is not restricted to a particular craft or class of employees. To assure understanding of the broad reach of the proceeding, FRA coined the term roadway worker and proposed use of that term in its Notice of Intent.

B. The Specific Issues

FRA's Notice of Intent listed several specific issues for negotiation by the Advisory Committee. FRA did not limit negotiations to these subjects only, but determined that the following issues should be covered:

- The availability of any devices to reduce the risk of danger to roadway workers and any costs associated with such devices;
- Any additional or revised procedures or operating practices that could be instituted to effectively reduce the risk of danger, and any costs associated with these procedures;
- Training programs that would reduce the risks of danger to roadway workers, the proper intervals for such training, and the costs associated with that training;
- The topographical, environmental, or operational conditions that must be considered in developing a program to reduce the risks of harm to roadway workers and the costs of addressing these conditions;
- Possible variations in programs according to size of railroads, and an explanation regarding why these variations are necessary;
- The recordkeeping and reporting requirements necessary to implement programs to advance the safety of roadway workers, and the cost of these requirements;
- The enforcement procedures FRA would utilize to ensure compliance with any rule that is developed;
- Any additional benefits resulting from a rule, aside from the obvious reduction of risk of injury and death;
- The usefulness of operating practices currently used by any particular railroad, their background, implementation, effectiveness, and cost.

Accident Data and Statistical Analysis

FRA published a report entitled *Engineering Department Fatalities Resulting from the Operation or Maintenance of On-Track Equipment,* representing the findings of FRA's investigation of 22 Engineering Department railroad employee fatalities during calendar years 1989–1993. The document was officially published in 1994, but the information was compiled in 1993, and was used in preliminary discussions regarding on-track safety, beginning with the March, 1993, workshop. Four categories of causes were established: struck by a train, struck by on-track maintenance of way equipment, crushed or pinned by on track equipment, and struck by free-rolling equipment.

A summary of information gathered from the investigation of each accident was included in the report. This document provided an information base from which to isolate causes and contributing factors that could be addressed in a proposed rule. FRA accident data provided the statistical basis to focus efforts toward certain prevention measures.

The independent labor management task force mentioned earlier also conducted an analysis of accident data. They focused on 43 accidents resulting in 46 roadway worker fatalities from 1986 through 1994. They also used data regarding 150 injuries to roadway workers reported to FRA from 1989 through 1994, and additional injury data submitted from carrier files. Questionnaires regarding the current industry practice for roadway worker safety were submitted by representatives from management and labor and reviewed by the task force. The cumulative effort of the task force included review of over 2,600 FRA reports as well as review of available NTSB reports related to roadway worker fatalities and injuries.

The data analysis conducted by the independent task force suggested that there were identifiable trends regarding these fatal accidents. The following are examples of patterns discovered in the accident data:

- Higher numbers of fatalities seem to occur in the fall and winter months of October, November, December, and January, but two summer months, May and July, also have a high number of fatalities.
- Fatalities tend to occur more often on Wednesdays and Thursdays.
- The highest number of fatalities tend to occur around 9:00 a.m. or 10:00 a.m.
- The largest number of employees killed are between the ages of 40 and 49 years old. These individuals generally have at least 15 years of railroad experience, with some having more than 20 years of experience.
- The largest number of fatalities occurred within approximately six months following rules training and safety training.
- Most fatalities occurred while some form of protection system was available or in use.
- Maintenance of Way employees and Signal employees had the highest number of fatalities.

There are numerous possible explanations for these trends. Multiple factors may have contributed to these incidents, and isolating a single distinct cause or explanation is virtually impossible. Inclusion of these patterns was not intended for that purpose, but to merely to inform the group of identifiable tendencies that appear in the accident data.

Advisory Committee Report

As noted earlier, the Advisory Committee reached consensus on a report containing 11 specific recommendations and 9 general recommendations. The specific recommendations provided the concepts that formed the basis for the text of this proposed rule. The data review by the independent task force and the Advisory Committee revealed other useful information regarding conditions that need special emphasis in the on-track safety programs. The Advisory Committee made the general recommendation that this information should be published by FRA with this rule.

This information identifies particular conditions to which roadway workers should devote special attention, as they appear to be more problematic than others. This information and other relevant trends are included here, so that these facts might be considered by railroads when devising on-track safety programs.

Analysis of the data indicates that 16% of the fatal accidents and 37% of the injury incidents were the result of on-track equipment striking roadway workers or other roadway equipment. The Advisory Committee concluded that training, job briefings, and operation of on-track equipment should place special emphasis on:

- Attention to visibility/stopping distance
- Review of stopping capability and limitations
- Purpose and limits of work zones
- Attention to existing weather conditions

- Importance of maintaining proper equipment spacing
- Briefing concerning joint track occupancy
- Procedures for traveling on track

Further analysis indicated that 35% of non-fatality incidents were on Thursdays, and 50% of non-fatality incidents occurred between 7:30 a.m. and 10:30 a.m. to Maintenance of Way roadway workers. The Committee could not explain this trend with any degree of certainty. However, it was generally agreed that special emphasis to alert Maintenance of Way roadway workers to these facts must be made in safety awareness training during job briefings, safety meetings and rules training.

The Committee also discovered that 69% of fatal incidents to signal maintainers occurred during November, December, and January. The Committee recommended that employers should consider and point out this fact in safety awareness training during job briefings, safety meetings, and rules training.

Considerable discussion in the Committee sessions centered around training. Because statistics indicate that 65% of the fatally-injured roadway workers had attended rules training within the previous 12 months, the Advisory Committee concluded that training must be improved. Areas to focus on for improvement would include:

- Curriculum development and content
- Learning environment
- Presentation and interactive instruction
- Understanding and application
- Peer training
- On-Track Safety specific subjects

It had been thought by some that employees involved in these accidents were generally among newer employees who perhaps were not familiar with the railroad environment. Contrary to this likely assumption, the data indicated that 26% of the fatalities involved supervisory employees. These roadway workers are familiar with the railroad environment and protection methods, and had many years of railroad experience. The Committee therefore concluded that additional emphasis should be placed on the following:

- Selection of Managers
- Quality of Training
- Management commitment to on-track safety
- Priority to on-track safety
- Serving as a role model

The negotiated rulemaking process has been a success. Continued joint efforts such as this should be of great benefit to the railroad industry, its employees, and the public. In recognition of this, the Advisory Committee adopted the following recommendations to foster continued collaboration among the interested parties:

- Establish a joint labor/management/FRA process to evaluate analyze and encourage emerging technologies which may enhance roadway on-track worker safety. This recommendation is made to allow prompt and thorough evaluation of such emerging technology.
- The Joint Labor-Management On-Track Safety Task Force should meet on a periodic basis (at least semi-annually) to review progress, to review current data and to continue a joint labor/management dialogue seeking ways to improve roadway worker on-track safety.

It should be noted that the Joint Labor-Management On-Track Safety Task Force is not the Federal Advisory Committee on Roadway Worker Protection, nor does the Joint Task Force have any official standing with the Federal government. The Federal Advisory Committee recommended that the Joint Labor-Management On-Track Safety Task Force remain in existence and meet periodically, and to the extent that the parties represented on the Task Force elect to do so, it undoubtedly will. FRA encourages close cooperation among the various parties and interests to resolve safety problems both in this rule and as a matter of good public policy. FRA also gives considerable attention to proposals that represent a consensus of the interested parties, and anticipates that the Joint Labor-Management On-Track Safety Task Force will facilitate this type of cooperative effort.

Scope of the Rule

FRA and the Advisory Committee deliberated at length over how much the proposed rule would cover. Scoping discussions ranged from who would be covered under this rule, as discussed earlier, to what measurement of the surrounding track space places an employee in danger of being struck by a train or moving equipment. During these discussions, two additional issues surfaced requiring an explanation of who would be covered under this rule, contractors and tourist railroads.

Contractors

FRA realizes that parties who have not traditionally been considered railroads will be affected by this regulation. The decision to include employees of contractors as roadway workers in this regulation was a well-reasoned one. FRA's objective was to promulgate standards applicable to anyone working on or about railroad tracks who may be in danger while performing their duties. The craft or job title of an employee is of little relevance. Equally irrelevant is whether an employee is paid by a railroad or by a contractor engaged by a railroad. The most important issue is the prevention of deaths and injuries. FRA holds no position on the practice of a railroad contracting work out to another company, but FRA strongly believes that contractor employees are entitled to the same level of safety as railroad employees. To the extent that contractor employees work under circumstances presenting the hazards addressed here they must be protected.

FRA understands the circumstances under which many contractors conduct their work and realizes that adhering to the standards of this rule may appear burdensome to contractors. However, a closer examination of the standards in the rule shows that contractors will not normally devise their own on-track safety programs, but would follow the programs established by the railroads on which they are working. Most of a contractor's employee training will be of a basic nature, as railroad employees are usually working with and protecting contractors working near moving trains. Those railroad employees will normally arrange protection in accordance with the rules and procedures of the railroad.

Contractors will, however, be responsible for compliance with this subpart. They are responsible as employers to ensure that their employees have protection prior to assigning them to work on or near the track, and to ensure that their employees have been properly trained to work safely in the railroad environment. Since contractors were not represented on the Advisory Committee, FRA specifically invites comments from contractors on this proposed rule.

Tourist Railroads

Tourist and excursion railroads that operate on the general system of railroad transportation will be included. Tourist and excursion railroads that do not operate on the general system will be excluded. FRA realizes that adhering to the standards in this rule may appear burdensome to railroads operating in the tourist industry. However, a closer examination of the issue reveals that many tourist railroads operating on the general system actually operate on track owned by another railroad. Those tourist railroads would be required to follow the rules of the track owners, if they were to operate over that portion of track or conduct any maintenance on that portion of track.

Additionally, it is FRA's understanding that many tourist and excursion railroads do not conduct their maintenance work under traffic, but do so during periods when there is little or no traffic. Therefore, any program devised to adhere to the standards of this subpart by a tourist railroad could be fairly simple, and any required training for roadway workers would be of a basic and general nature.

FRA does not intend to unduly burden railroads operating in the tourist industry. However, if these railroads are going to operate in the general system of transportation and there is any chance that their employees will be confronted with the risk of injury and death from trains or moving equipment, they must adhere to the standards of this regulation. Since tourist railroads were not represented on the Advisory Committee, FRA specifically invites comments from tourist railroads on this proposed rule.

Rights and Responsibilities of Employees and Employers

FRA agreed with the Advisory Committee that roadway workers must understand, and therefore must be able to review and question, on-track safety provisions. The proposed rule therefore provides that a roadway worker who finds that the on-track safety provisions in place do not comply with the rules of the operating railroad has both a right and a responsibility to occupy a place of safety until the question is resolved. Section 214.313 imposes a reciprocal responsibility for on-track safety onto each individual roadway worker. Accordingly, a roadway worker has to be able to decide whether on-track safety is being provided and if not, he or she has a right and an obligation to remain off the track until the matter is resolved, and to notify the employer of possible flaws in on-track safety provisions.

FRA has considerable authority in the area of railroad safety. This authority extends to individuals as well as to railroad carriers. FRA will act whenever it finds or receives notice of possible violations of this rule. Should a potential violation involve the rights and responsibilities of an individual roadway worker to question on-track safety procedures, FRA will consider all available evidence, including written records maintained by parties in the case, statements of witnesses, the nature of the on-track safety provisions in effect at the time, and whether the involved employee or employees had been correctly informed of those on-track safety provisions.

Deviations From the Advisory Committee Reports

FRA committed to adhere to the consensus reached by the Advisory Committee, unless the agreed upon course of action violated legal requirements, statutory authority, departmental regulations, or in the agency's view, did not adequately address the subject matter. The Advisory Committee produced two documents, an initial report of principles to be addressed in this proceeding, and later a proposed Notice of Proposed Rulemaking which incorporated the basic principles in language recommended by the Committee.

The two substantive deviations between the Advisory Committee Report and the proposed NPRM involved changes in terminology. They were enumerated in the proposed NPRM, and are retained here for reference.

Term, Positive Protection

The report submitted by the Advisory Committee used the term Positive Protection to describe several circumstances in which roadway workers would be safe from the threat of approaching trains, or essentially ''protected'' from them.

Analysis of the Committee recommendation by FRA showed that two quite different procedures were contemplated under the provision of Positive Protection. One was a broad group of existing railroad procedures designed to hold trains clear of certain tracks, and the other was a procedure in which roadway workers would be warned of an approaching train in time to clear the tracks before the train arrived. Strictly for purposes of semantics, to permit consistency in the text of the rule, FRA has divided the procedures grouped in the recommendation under the term Positive Protection into two categories: Working Limits and Train Approach Warning. Explanation of these two categories of on-track safety procedures are found in the rule text and corresponding section-by-section analysis.

Term, Positive Train Location System

The Advisory Committee proposed use of the term positive train location system to identify a type of on-track safety protection available in accordance with this rule. The term positive has greater implications than the Committee intended. FRA does not wish to confound the terminology of this or other proceedings by using terms already applied to concepts that were under development for several years before this proceeding began. FRA particularly does not wish to limit or inhibit the development of any aspect of Advanced Train Control Systems (ATCS), Positive Train Control (PTC), or Positive Train Separation (PTS). Promulgating a regulation that would limit a practice termed positive train location could be misconstrued as somehow limiting ATCS, PTC, or PTS.

FRA therefore substitutes the term definite train location as the name of a system which is the same as that termed by the Advisory Committee a positive train location system. The definition will not change. It is FRA's contention that this new term captures the meaning of the former term. Essentially, the proposition is the same, in which trains will only be authorized to pass certain locations at or after definite times.

FRA also found it necessary to deviate from the exact language of the NPRM proposed by the Advisory Committee in several instances. Most were simple editorial changes for clarification or correction, and the renumbering of sections for correct sequencing behind section 214.229. Some substantive changes were also made, which are enumerated and either explained or referenced here.

Term , Definite Train Location

FRA removed three sentences of operational requirements from the definition, and replaced them with a reference to section 214.329 of this part, which implements and specifies the requirements for definite train location. The change was made to eliminate redundancy and to conform to standards of proper regulatory language.

Term—Exclusive Track Occupancy

FRA made an editorial change, and added the cross reference to section 214.321 of this part for reasons stated under Term, Definite train location, above.

Term—Foul Time

FRA made an editorial change, and added the cross reference to section 214.323 of this part for reasons stated under Term, Definite train location, above.

Term—Inaccessible Track

FRA inserted additional clarifying language at the end of the definition, by physically preventing entry and movement of trains and equipment, to clarify the definition.

Term—Restricted Speed

FRA added references to train or other equipment and the range of vision of the

person operating the train or other equipment. This term as originally written is commonly found in railroad operating rules which govern the movement of trains. In that context, the applicability is clear. However, in this regulation FRA feels that the applicability should be more clearly specified. There is no intent by FRA to supersede this definition in other regulations or applications.

Term—Roadway Maintenance Work Train

FRA deleted references to roadway maintenance work train from the rule, and from the definition of roadway maintenance machine. The term is not used in the regulation, and was an artifact of an earlier draft. There is no distinction between roadway maintenance work trains and trains operated for any other purpose under the same types of controls.

Term—Working Limits

FRA made editorial changes to this definition to replace the word limits within the definition with the word boundaries simply to avoid use of a defined word in its own definition. The meaning of the definition is not changed.

Section 214.317 On Track Safety Procedures, Generally

FRA proposes that a phrase be added to his section that more clearly requires an employer to adopt a program containing specific rules that comply with the requirements of this section. FRA also proposes to eliminate the qualifier, roadway workers who foul a track, because roadway workers are, by definition, employees whose duties situate them where they may potentially foul a track.

Section 214.329 Definite Train Location

Besides the change in the definition of the term Definite train location mentioned above, FRA proposes to add operative language, previously found in the definition of definite train location, to this section, which is referenced in the definition.

Section Analysis

FRA proposes to amend Part 214 of Title 49, Code of Federal Regulations by adding a new subpart specifically devoted to the protection of employees from the hazards associated with working near moving trains and equipment.

1. Application: § 214.3

FRA proposes that this subpart will apply to all railroads and contractors to railroads in the general system of railroad transportation, including commuter rail operations. Accordingly, existing section 214.3 will not change. This means that tourist and excursion railroads that are not part of the general system of railroad transportation will not be subject to these rules. The data illustrating the serious nature of the hazards addressed in this subpart did not include tourist and excursion railroads. FRA has not otherwise been notified that these hazards causing death and injury to roadway workers are a serious problem for tourist and excursion railroads or any other railroads not operating over the general system of railroad transportation. However, FRA reserves the right to include tourist and excursion railroads that do not operate on the general system of railroad transportation in the final rule, if the record reflects such a need.

2. Definitions: § 214.7

Section 214.7 will be amended to add new definitions. Several definitions are particularly important to the understanding of the rule, and are explained here. However, many other terms are defined and explained with the analysis of the rule text to which they apply.

Effective securing device is defined in this part as one means of preventing a manually operated switch or derail from being operated so as to present a hazard to roadway workers present on certain non-controlled tracks. This definition is specifically intended to include the use of special locks on switch and derail stands that will accommodate them, and switch point clamps that are properly secured. It also includes the use of a spike driven into the switch tie against the switch point firmly enough that it cannot be removed without proper tools, provided that the rules of the railroad prohibit the removal of the spike by employees not authorized to do so. Every effective securing device must be tagged. FRA will examine each railroad's on-track safety program to determine that the rules governing the securement of switches will provide the necessary level of protection.

Lone workers are defined in this part as roadway workers who are not being afforded on-track safety by another roadway worker, are not members of a roadway work group, and are not engaged in a common task with another roadway worker. Generally, a common task is one in which two or more roadway workers must coordinate and cooperate in order to accomplish the objective. Other considerations are whether the roadway workers are under one supervisor at the worksite; or whether the work of each roadway worker contributes to a single objective or result.

For instance, a foreman and five trackmen engaged in replacing a turnout would be engaged in a common task. A signal maintainer assigned to adjust the switch and replace wire connections in the same turnout at the same time as the track workers would be considered a member of the work group for the purposes of on-track safety. On the other hand, a bridge inspector working on the deck of a bridge while a signal maintainer happens to be replacing a signal lens on a nearby signal would not constitute a roadway work group just by virtue of their proximity. FRA does not intend that a common task may be subdivided into individual tasks to avoid the use of on-track safety procedures required for roadway work groups.

On-track safety is defined as the state of freedom from the danger of being struck by a moving railroad train or other railroad equipment, provided by operating and safety rules that govern track occupancy by personnel, trains and on-track equipment. This term states the ultimate goal of this regulation, which is for workers to be safe from the hazards related to moving trains and equipment while working on or in close proximity to the track. The rule will require railroads to adopt comprehensive programs and rules to accomplish this objective. This rule, and required programs, will together produce a heightened awareness among railroad employees of these hazards and the methods necessary to reduce the related risks.

Qualified as used in the rule with regard to roadway workers implies no provision or requirement for Federal certification of persons who perform those functions.

Roadway worker is defined as any employee of a railroad, or of a contractor to a railroad, whose duties include inspection, construction, maintenance or repair of railroad track, bridges, roadway, signal and communication systems, electric traction systems, roadway facilities or roadway maintenance machinery on or near track or with the potential of fouling a track, and flagmen and watchmen/lookouts as defined in this rule.

Some railroad employees whose primary function is transportation, that is, the movement and protection of trains, will be directly involved with on-

track safety as well. These employees would not necessarily be considered roadway workers in the rule. They must, of course, be capable of performing their functions correctly and safely.

The rule requires that the training and qualification for their primary function, under the railroad's program related to that function, will also include the means by which they will fulfill their responsibilities to roadway workers for on-track safety. For instance, a train dispatcher would not be considered a roadway worker, but would be capable of applying the railroad's operating rules to the establishment of working limits for roadway workers. Likewise, a conductor who protects a roadway maintenance machine, or who protects a contractor working on railroad property, would not be considered a roadway worker, but would receive training on functions related to on-track safety as part of the training and qualification of a conductor.

Employees of contractors are included in the definition if they perform duties on or near the track. They should be protected as well as employees of the railroad. The responsibility for on-track safety of employees will follow the employment relationship. Contractors are responsible for the on-track safety of their employees and any required training for their employees. FRA expects that railroads will require their contractors to adopt the on-track safety rules of the railroad upon which the contractor is working. Where contractors require specialized on-track safety rules for particular types of work, those rules must, of course, be compatible with the rules of the railroad upon which the work is being performed.

The rule does not include employers, or their employees, if they are not engaged by or under contract to a railroad. Personnel who might work near railroad tracks on projects for others, such as cable installation for a telephone company or bridge construction for a highway agency, come under the jurisdiction of other Federal agencies with regard to occupational safety.

The terms explained here are not exhaustive of the new definitions that will be added to Section 214.7. This introduction merely provides a sampling of the most important concepts of this proposed regulation. Many other terms are defined and explained in the section by section analysis when analyzing the actual rule text to which they apply.

3. Purpose and Scope: § 214.301

Section 214.301 states the purpose for the minimum standards required under this subpart to protect roadway workers. Railroads can adopt more stringent standards as long as they are in accordance with this subpart.

4. Railroad On-Track Safety Programs, Generally: § 214.303

Section 214.303 gives the general requirement that railroads shall adopt and implement their own program for on-track safety, which meets Federal minimum standards. Rather than implement a command and control rule, FRA decided to establish the parameters for such a program and defer to the expertise of each individual railroad to adopt a suitable on-track safety program for their railroad, in accordance with these parameters. FRA felt that establishing an internal monitoring process to determine compliance and effectiveness would be a necessary component of any On-Track Safety Program. Consequently, each railroad must incorporate an internal monitoring process as a component of its individual program. It should be noted that this internal monitoring will not replace FRA's inspection and monitoring efforts for compliance with this subpart.

5. Effective Dates: § 214.305

Section 214.305 establishes the schedule for the rule to go into effect. The dates vary by class of railroad. FRA believes that staggering effective dates allows the largest number of workers who are exposed to the highest level of risk to benefit from the On-Track Safety Program first. FRA hopes to be able to expedite the review process, as the smallest number of individual programs will be put in place by the major carriers. After this initial phase of reviews for Class I railroads, FRA will have established review policies and resolved many recurrent issues, making the larger number of reviews for smaller railroads more efficient. The experience gained through the initial phase of the review process will contribute to the next and larger phase of reviews. Although the rule formally establishes a later required effective date on smaller railroads, this would not prevent smaller railroads from implementing their programs sooner.

6. Review and Approval of Individual On-track Safety Programs by FRA: § 214.307

Section 214.307 specifies the process for review and approval of each railroad's on-track safety program by FRA. The intent of the review and approval is to be constructive, rather than restrictive. FRA prefers that a review of each program take place at the railroad because an open discussion of the program would be beneficial to all concerned. The effective date of a railroad's program will not be delayed by FRA's scheduling of a review, or granting approval. The railroad will be responsible for compliance with this rule regardless of FRA review or approval of its program.

Likewise, a railroad may amend its program following FRA approval without prior approval of the amendment from FRA. Of course, should FRA later disapprove the amendment, the program would have to be changed to secure FRA's approval. The railroad will still be responsible for compliance with this rule, and subject to compliance monitoring and enforcement by FRA. FRA will make every effort, when requested, to provide a timely review of a program or amendment before its effective date, and to assist in any manner possible to enhance the on-track safety afforded to roadway workers.

Contractors will be required to conform to the on-track safety programs on the railroads upon which they are working. Contractors whose employees are working under a railroad's approved on-track safety program need not submit a separate on-track safety program to FRA for review and approval.

Some contractors operate highly specialized equipment on various railroads on a regular basis. That equipment might require special methods to provide on-track safety for railroad and contractor employees. Such a special method will require a clear and reasonable way to mesh with the on-track safety programs of the railroads upon which the equipment is operated.

The rule does not specifically call for the involvement of employees or their representatives in the program design or review process, because the responsibility for the program's compliance with this rule lies with the employer. However, it should be noted that this rule itself is the product of a successful proceeding in which management, employee representatives and the Federal government were fully involved from the beginning. That fact should be an encouragement to all concerned to realize that the success of an on-track safety program will require the willing cooperation of all persons whose duties or personal safety are affected by the program.

7. On-track Safety Program Documents: § 214.309

Section 214.309 specifies the type of on-track safety manual each railroad

must have. Essentially, the railroad must have all on-track safety rules in one place, easily accessible to roadway workers. This provision is intended to provide the roadway worker with a single resource to consult for on-track safety, to avoid fragmentation of the rules and the ultimate dilution of their vital message.

All on-track safety rules could be placed together as an on-track safety section of an already existent manual. FRA is aware that many railroads use a binder system for railroad manuals. Adding a section to such a binder might be less burdensome than creating a separate manual, and would clearly comply with this provision.

An employer, such as a contractor, whose roadway workers work on another employer's railroad, will usually adopt and issue the on-track safety manual of that railroad for use by their employees. It will be the employer's responsibility to provide the manual to its employees who are required to have it and to know that each of its employees is knowledgeable about its contents.

This section also sets forth the responsibility of the employer to provide this manual to all employees who are responsible for the on-track safety of others, and those who are responsible for their own on-track safety as lone workers. Workers who are responsible for the protection of others must have the manual at the work site for easy reference. Lone workers must also have this manual easily available to them. FRA does not intend that the individual must necessarily have this manual on his or her person while performing work, but to have it available and readily accessible at the work site.

FRA also does not intend that all related operating rules, timetables or special instructions must be reproduced in this manual. Any related publications or documents should be cross-referenced in the On-Track Safety Manual and provided to employees whose duties require them.

Lastly, the manual must be at the work site available for reference by all roadway workers. Many roadway workers will not be responsible for providing protection for themselves or others, but still must comply with the rules. All employees have a responsibility to remain at a safe distance from the track unless they are assured that adequate protection is provided. Although not responsible for providing protection for others, they must be familiar with the rules to determine whether adequate protection is provided and have the rules readily available if it is necessary to consult them.

8. Responsibility of Employers: § 214.311

Section 214.311 addresses the employer's responsibility in this rule. This section applies to all employers of roadway workers. Employers may be railroads, contractors to railroads, or railroads whose employees are working on other railroads. Although most on-track safety programs will be implemented by railroads rather than contractors, the employer is responsible to its employees to provide them with the means of achieving on-track safety.

Railroads are specifically required by § 214.303 to implement their own on-track safety programs. Section 214.311 however, places responsibility with all employers (whether they are railroads or contractors) to see that employees are trained and supervised to work with the on-track safety rules in effect at the work site. The actual training and supervision of contractor employees might be undertaken by the operating railroad, but the responsibility to see that it is done rests with the employer.

The guarantee required in paragraph (b) of an employee's absolute right to challenge on-track safety rules compliance will be a required part of each railroads's on-track safety program, as will be the process for resolution of such challenges. On-track safety depends upon the faithful and intelligent discharge of duty by all persons who protect or are protected by it. Any roadway worker who is in doubt concerning the on-track safety provisions being applied at the job location should resolve that uncertainty immediately.

The term at the job location is not meant to restrict who can raise an issue or where an issue can be raised. Rather, the challenge must address the on-track safety procedures being applied at a particular job location.

A fundamental principle of on-track safety is that a roadway worker who is not entirely certain that it is safe to be on the track should not be there. A discrepancy might be critical to the safety of others, and the first roadway worker who detects it should take the necessary action to provide for the safety of all.

The Advisory Committee used the term *No-Fault Right* in its report to describe the absolute right of each employee to challenge, without censure, punishment, harm or loss, the on-track safety compliance expressed in paragraph (b) of this section. A challenge must be made in good faith in order to fall within the purview of this rule. A good faith challenge would trigger the resolution process called for in paragraph (c).

The written process to resolve challenges found in paragraph (c) is intended to provide a prompt and equitable resolution of these concerns. This is necessary in order that any problems that arise regarding on-track safety should be resolved and that any possible lapses in safety be quickly corrected.

The resolution process should include provisions to permit determination by all parties as to the safe, effective application of the on-track safety rule(s) being challenged at the lowest level possible, and for successive levels of review in the event of inability to resolve a concern at lower levels. FRA believes it best for employers, consulting with employees and their representatives where applicable, to write effective processes to accomplish these objectives.

A railroad's on-track safety program will be reviewed and approved in accordance with section 214.307(b). FRA will consider this written process during its review and approval of the overall on-track safety submission. FRA will consider whether the written processes afford a prompt and equitable resolution to concerns asserted in good faith and their effectiveness in promoting the intelligent, reasoned application of the on-track safety principles.

9. Responsibility of Individual Roadway Workers: § 214.313

Section 214.313 addresses the individual responsibility of each roadway worker. Each roadway worker has a responsibility to comply with this subpart which is enforceable under the provisions of individual liability. Paragraph (a) requires that each roadway worker follow the railroad's on-track safety rules. Paragraph (b) prohibits roadway workers from fouling a track unnecessarily. It is FRA's opinion, as well as that of the Advisory Committee, that roadway workers should under no circumstances foul a track unless it is necessary to accomplish their duties.

A reference to the definition of fouling a track is useful to understand when protection is required. Fouling a track describes the circumstance in which a person is in danger of being struck by a moving train.

Under paragraphs (c) and (d), each roadway worker has the responsibility to know that on-track safety is being provided before actually fouling a track, and to remain clear of the track and inform the employer when the required

level of protection is not provided. If a roadway worker is not sure that sufficient on-track safety is being provided, he or she can satisfy paragraph (c) by simply not fouling the track.

It is a roadway worker's responsibility to advise the employer of exceptions taken to the application of a railroad's rules, or provisions of this subpart, in accordance with paragraph (d). Employees must approach this responsibility in good faith. Essentially an employee must have honest concerns whether the on-track safety procedures being used provide the necessary level of safety in accordance with the rules of the operating railroad. Furthermore, employees must be able to articulate those concerns in order to invoke the resolution process of the railroad. Initiating an action under the resolution process, absent a good faith concern regarding the on-track safety procedures being applied, would not be in compliance with this subpart.

10. Supervision and Communication: § 214.315

Section 214.315 details supervision and communication of on-track safety methods prior to working. Employees must be notified and acknowledge understanding of the on-track safety methods they are to use, prior to commencing duties on or near the track. Paragraphs (a) and (b) establish the duty of notification by the employer and the reciprocal duty of communicating acknowledgment by the employee. These sections essentially require a job briefing to inform all concerned of on-track safety methods at the beginning of each work period. The acknowledgment is an indication by the employee of understanding, or the opportunity to request explanation of any issues that are not understood.

Paragraph (c) requires that an employer designate at least one roadway worker to provide on-track safety while a group is working together. This designation can either be for a specific job or for a particular work situation. This section is vital to the success of any on-track safety program because the mere presence of two or more persons together can be distracting for all persons involved. FRA believes that awareness will be enhanced and confusion limited by requiring railroads to formally designate a responsible person. This designation must be clearly understood by all group members in order to be effective. An individual, such as a foreman, may generally be designated to be responsible for his or her group, but if two groups are working together or roadway workers of different crafts are assisting one another, it is imperative that this formal designation be communicated to and understood by all affected employees.

Paragraph (d) explains the duties of the roadway worker designated to provide on-track safety for the work group. Before roadway workers foul a track, the designated person must inform each roadway worker in the group of the on-track safety methods to be used at that time and location. Essentially, the designated person must conduct an on-track safety briefing prior to the beginning of work on or near the track. This briefing might also fulfill the requirements of paragraph (a) of this section.

Before changing on-track safety methods during a work period, the designated roadway worker must again inform the group of the new methods to be used for their safety. If, for example, roadway workers are working on a track within working limits when the on-track safety method changes to train approach warning, all roadway workers fouling the track must first be informed that trains might approach on that track, and that they will be warned of the approaching train by watchmen/lookouts. They must also know that they can no longer depend on that track as a place of safety when a train approaches.

This provision also establishes methods to be used in the face of unforeseen circumstances. In these emergency situations, where notification of a change in methods cannot be accomplished, an immediate warning to leave the fouling space and not return until on-track safety is reestablished is required.

Paragraph (e) addresses the lone worker. The lone worker must also have a job briefing before fouling the track. This briefing will be slightly different, since the lone worker is not working under direct supervision. At the beginning of the duty period, and prior to fouling the track, the lone worker must communicate with a supervisor or another designated employee to advise of his itinerary and the means by which he plans to protect himself. This briefing should include his geographical location, approximate period of time he is expected to be in this general locality, different locations planned for the day, and the planned method of protection. This paragraph assumes that in accordance with other sections, the lone worker is capable of determining the proper means to achieve his own on-track safety.

This paragraph also provides for emergencies in which the channels of communication are disabled. In those cases, the briefing must be conducted as soon as possible after communication is restored. An interruption in communication does not prevent the lone worker from commencing work. However, since the lone worker will not have described his itinerary and the on-track safety methods to be used in this location to another qualified employee, he must do all that is necessary to maintain the requisite awareness of his surroundings.

11. On-track Safety Procedures, Generally: § 214.317

Section 214.317 refers to the following sections 214.319 through 214.335 that prescribe several different types of procedures that may be used to achieve on-track safety. It requires employers to use one or more of these types of procedures whenever employees foul a track.

The definition of fouling a track includes a minimum distance limit of four feet from the field, or outer, side of the running rail nearest to the roadway worker. A person could be outside that distance and still be fouling the track under this rule if the person's expected or potential activities or surroundings could cause movement into the space that would be occupied by a train, or if components of a moving train could extend outside the four-foot zone.

Railroad equipment is commonly 10 feet 8 inches wide. Standard track gauge is 4 feet 8½ inches but when adding the nominal width of the rail, the rail spacing can be taken as 5 feet 0 inches for the purposes of this rule. The fouling space would therefore be 13 feet wide (5+4+4 feet).

One exception to the four-foot minimum distance is found in paragraph § 214.339(c) (Roadway maintenance machines) and is discussed in the analysis of that section.

The report of the Advisory Committee includes the statement that ''The provisions of restricted speed do not solely provide protection for track equipment, or roadway workers, performing maintenance.'' The rule does not recognize restricted speed as a sole means of providing on-track safety.

The Advisory Committee also found, and FRA agrees, that although the definitions of ''restricted speed'' found in this rule and in use throughout the railroad industry provide adequate separation between trains and on-track machines in a traveling mode, a blanket provision that would rely upon restricted speed to protect persons working while fouling the track would not be effective. Individual locations at which unusual circumstances could result in sufficient protection for

roadway workers from trains moving at restricted speed would be addressed by FRA through the waiver process.

12. Working Limits, Generally: § 214.319

Section 214.319 prescribes the general requirements for the establishment of working limits. A reference to the definition of Working Limits is helpful to the understanding of this section.

Working limits is an on-track safety measure which when established eliminates the risk of being struck by trains. Several methods of establishing working limits are found in this subpart. Those methods are distinguished by the method by which trains are authorized to move on a track segment, the physical characteristics of the track, and the operating rules of the railroad.

Paragraphs (a) and (b) specifically refer to the roadway worker who is given control over working limits. These requirements assure that the roadway worker has the requisite knowledge and training, and prevent confusion by giving control to only one qualified roadway worker.

Paragraph (c) provides the restrictions under which trains and roadway maintenance machines will be allowed to operate within working limits. The intent is that the roadway worker in charge will be able to communicate with a train while it is within the working limits, and to control its movement to prevent conflicts between trains, machines and roadway workers.

The requirement that trains move at restricted speed in working limits unless otherwise authorized by the roadway worker in charge is intended as a fail-safe provision to afford the highest level of safety in the absence of authority for higher speed. FRA does not contemplate, nor would it condone, a situation in which a roadway worker could authorize a higher speed for a train than would be otherwise permitted by the operating rules and instructions of the railroad.

Paragraph (d) addresses the procedure when working limits are released. It requires that all affected roadway workers be notified before trains will begin moving over the affected track. They must be either away from the track, or provided with another form of on-track safety.

An example is a work group using a crane to replace rail. Rails are removed from the track, the crane is on the track, and on-track safety is provided by the establishment of working limits. When the rails have been replaced, the crane moves out of the working limits onto another track, the roadway worker in charge stations watchmen/lookouts to provide train approach warning and notifies all the roadway workers at the work site that train approach warning is now in effect and the working limits are to be released. The roadway worker in charge then releases the working limits to the train dispatcher to permit the movement of trains. The roadway workers at the work site continue to work with hand tools while on-track safety is provided by the watchmen/lookouts.

13. Exclusive Track Occupancy: § 214.321

Section 214.321 prescribes working limits on controlled track as one form of on-track safety allowed in accordance with the provisions of this subpart. Reference to the definitions of Controlled Track and Exclusive Track Occupancy are helpful to the understanding of this section.

Controlled track is track on which trains may not move without authorization from a train dispatcher or a control operator. On most railroads, trains move on main tracks outside of yard limits, and through interlockings, only when specifically authorized by a train dispatcher or control operator. This authorization might take the form of an indication conveyed by a fixed signal, or a movement authority transmitted in writing, orally, or by digital means. Such track would conform to the definition of controlled track.

Some railroads extend the control of a train dispatcher to main tracks within yard limits. This control is exercised by requiring the crew of every train and engine to obtain a track warrant specifying the limits of the territory in which the crew may operate. The track warrant lists all restrictions that are in effect within the limits specified, including any working limits established to protect roadway workers or train movements. The working limits are delineated by flags as specified in section 214.321(c)(5). Track from which trains can be effectively withheld by such a procedure would conform to the definition of controlled track.

Exclusive track occupancy is the means prescribed in this section to establish working limits on controlled track. The procedures associated in this section with exclusive track occupancy are intended to assure that unauthorized train movements will not occur within working limits established by exclusive track occupancy.

This section addresses controlled track, as it is the type of track upon which exclusive track occupancy can be established by the dispatcher or control operator. By virtue of their authority to control train movements on a segment of controlled track, a dispatcher or control operator can also hold trains clear of that segment by withholding movement authority from all trains. The procedure depends upon communication of precise information between the train dispatcher or control operator, the roadway worker in charge of the working limits, and the crews of affected trains. This section is intended to prescribe that level of precision.

Paragraph (a) requires that authority for exclusive track occupancy may only be granted by the train dispatcher or control operator who has control of that track to a roadway worker who has been trained and designated to hold such an authority. No other person may be in control of the same track at the same time.

Paragraph (b) and corresponding subparagraphs prescribe the methods for transferring the authority for exclusive track occupancy to the roadway worker with the requisite level of accuracy.

Paragraph (c) and corresponding subparagraphs prescribe physical markers or features that may be used to indicate the extent of working limits established under this paragraph with the requisite level of precision. Flagmen are included as a valid means of establishing exclusive track occupancy because they are effective, and they might be the only means available on short notice or at certain locations.

14. Foul Time: § 214.323

Section 214.323 prescribes another form of on-track safety involving the establishment of working limits through exclusive track occupancy. This method of protection is called foul time and is only prescribed for use on controlled track. The definition of foul time should be referenced for a complete understanding of this concept. Foul time requires oral or written notification by the train dispatcher or control operator to the responsible roadway worker that no trains will be operating within a specific segment of track during a specific time period. The steps to obtain foul time are detailed in this section. Once foul time is given, a dispatcher or control operator may not permit the movement of trains onto the protected track segment until the responsible roadway worker reports clear.

15. Inaccessible Track: § 214.325

Section 214.325 requires that working limits on non-controlled track be established by rendering the track physically inaccessible to trains and equipment. A reference to the definitions of non-controlled track and inaccessible track is useful to the

understanding of this section. Trains and equipment can operate on non-controlled track without having first received specific authority to do so. Trains and equipment cannot be held clear of non-controlled track by simply withholding their movement authority. The roadway worker in charge of the working limits must therefore render non-controlled track within working limits physically inaccessible to trains and equipment, other than those operating under the authority of that roadway worker, by using one or more of the provisions of this section.

Typical examples of non-controlled track to which this section would apply include main tracks within yard limits where trains are authorized by an operating rule to move without further specific authority, yard tracks, and industrial side tracks. Paragraphs (a) through (d) detail the physical features that may be used to block access to non-controlled track within working limits.

16. Train Approach Warning Provided by Watchmen/Lookouts: § 214.327

Section 214.327 establishes the procedures for on track safety of groups that utilize train approach warning. A reference to the definition of train approach warning would be useful to the understanding of this section. Section 214.327 specifies the circumstances and the manner in which roadway work groups may use this method of on-track safety. Prescribed here is the minimum amount of time for roadway workers to retreat to a previously arranged place of safety, the duties of the watchman/lookout and the fundamental characteristics of train approach warning communication.

This section further imposes a duty upon the employer to provide the watchman/lookout employee with the requisite equipment necessary to carry out his on-track safety duties. It is intended that a railroad's on-track safety program would specify the means to be used by watchmen/lookouts to communicate a warning, and that they be equipped according to that provision.

The rule does not include a provision for train approach warning by any means other than the use of watchmen/lookouts. FRA is not aware of any other means of effectively performing this function with the requisite reliability, and will not place requirements for an untried system in this rule. However, the Advisory Committee report states that ''FRA will incorporate a near-term time-specific requirement to utilize on-track personal warning systems for roadway workers working alone under any conditions not requiring positive protection.'' FRA realizes that the technological advancements incorporated in ATCS, PTC or PTS might in the future provide another method of establishing on-track safety in compliance with this subpart. Although such technology is not specifically provided for in the current rule. Opportunities to employ advancements in this area will be handled pursuant to the waiver process. FRA will therefore be most interested in knowing when such systems are developed, tested, and proven reliable.

17. Definite Train Location: § 214.329

Section 214.329 describes a system of on-track safety which provides roadway workers with information as to the earliest times at which trains may leave certain stations, having been restricted at those stations by the train dispatcher or control operator. This form of on-track safety is called *Definite Train Location.* A reference to its definition is helpful to distinguish it from an *informational lineup of trains,* which is addressed in § 214.331.

Paragraph (a) limits the use of definite train location for on-track safety by Class I railroads to track where such a system was already in use on the effective date of this rule.

Paragraph (b) requires that a Class I railroad using a definite train location system must phase it out according to a schedule submitted to FRA with that railroad's on-track safety program.

Paragraph (c) establishes that definite train location can be used on certain subdivisions owned by railroads other than Class I railroads under certain specified conditions. These conditions include whether the system was in use before the effective date of this rule, or whether the subdivision has railroad traffic density below certain levels specified in that section during periods when roadway workers are normally on and about the track. Advisory Committee members felt that the amount and frequency of the traffic on a particular track dictated whether this form of on-track safety was feasible. FRA therefore proposes to incorporate this factor into the rule to allow some short lines and regional railroads to utilize this system.

Paragraph (d) and corresponding subparagraphs (1) through (6) set forth the requirements for a definite train location system and the qualifications that a roadway worker must have before using this system as a form of on-track safety.

18. Informational Line-ups of Trains: § 214.331

Section 214.331 specifies conditions for the use of *informational line-ups of trains.* Some railroads have used a form of informational line-ups to provide on-track safety for roadway workers for many years. Such a procedure requires the roadway worker to have a full understanding of the particular procedure in use, and the physical characteristics of the territory in which they are working. The Advisory Committee addressed this issue with the following specific recommendation:

> The Committee realizes that line-ups are being used less as a form of protection in the industry and recommends that line-up use be further reduced, eventually discontinued and replaced with Positive Protection as quickly as feasible, grand fathering line-up systems presently in use. * * *

Line-ups as used in this section differ from lists of trains in § 214.329 in that line-ups need not include definite restriction as to the earliest times at which trains may depart stations. FRA therefore follows the Advisory Committee recommendation by allowing railroads presently using line-ups to continue doing so under conditions presently in effect, provided that their on-track safety programs that are reviewed and approved by FRA contain adequate provisions for safety, and a definite date for completion of phase-out.

19. On-track Safety Procedures for Roadway Work Groups: § 214.333

Section 214.333 specifies requirements for on-track safety to be provided for roadway work groups. Other sections of the regulation discuss matters affecting the group such as the different types of on-track safety protection available to a group and the job briefing necessary for a group, but this section prescribes what procedures are required to fully comply with this subpart. The definition of roadway work group enables the distinction between general methods of providing on-track safety for groups and for individuals working alone. Examples of roadway work groups are a large or small track gang, a pair of signal maintainers, a welder and welder helper, and a survey party.

Paragraph (a) indicates that employers shall not require or permit roadway work groups to foul a track unless they have established on-track safety through *working limits, train approach warning, or definite train location.*

The reciprocal responsibility for the roadway worker is expressed in Paragraph (b). He should not foul a track without having been informed by the roadway worker in charge that on-track safety is being provided.

The concept of protecting roadway workers from the hazards of trains and

other on-track equipment on adjacent tracks is also important in this rule. A reference to the definition of adjacent tracks will clarify the meaning of paragraph (c) which details the conditions under which train approach warning must be used on adjacent tracks that are not within working limits. These are conditions in which the risk of distraction is significant, and which require measures to provide on-track safety on adjacent tracks.

The principle behind the reference to large scale maintenance or construction is the potential for distraction, or the possibility that a roadway worker or roadway maintenance machine might foul the adjacent track and be struck by an approaching or passing train. This issue was addressed in the report of the Advisory Committee with the recommendation:

> Before performing any work that requires Fouling the track or Adjacent Track(s) Positive Protection must be obtained and verified to be in effect by the roadway worker assigned responsibility for the work. Large scale track maintenance and/or renovations, such as but not limited to, rail and tie gangs, production in-track welding, ballast distribution, and undercutting, must have Positive Protection on Adjacent Tracks as well.

FRA will consider the provisions made for this situation when reviewing each railroad's on-track safety program.

The spacing of less than 25 feet between track centers, which defines adjacent tracks for the purpose of this rule, represents a consensus decision of the Advisory Committee. Several railroads have recently extended their lateral track spacing to 25 feet. Tracks spaced at that distance may not cause a hazard to employees in one track from trains and equipment moving on the other track. FRA believes that no purpose would be served by requiring these tracks to be again spaced at a slightly greater distance. Therefore, tracks spaced at 25 feet are not defined as adjacent tracks, but tracks spaced at a lesser distance will be so defined. Tracks that converge or cross will be considered as adjacent tracks in the zone through which their centers are less than 25 feet apart.

As a practical matter, FRA will apply a rule of reason to the precision used in measuring track centers, so that minor alignment deviations within the limits of the Federal Track Safety Standards (49 CFR 213) would not themselves place such short segments of track within the definition of adjacent tracks.

20. On-track Safety Procedures for Lone Workers: § 214.335

Section 214.335 establishes specific on-track safety procedures for the lone worker. Paragraph (a) sets forth the general requirement that restricts the use of individual train detection to circumstances prescribed in this section and the corresponding on-track safety program of the railroad.

Paragraph (b) represents the clear consensus of the Advisory Committee that a decision to not use individual train detection should rest solely with the lone worker, and may not be reversed by any other person. On the other hand, improper use of individual train detection where this rule or the on-track safety program of the railroad prohibit it would be subject to review. This provision was stated by the Advisory Committee as part of its Specific Recommendation 3, which part reads, ''All roadway workers have the absolute right to obtain positive protection at any time and under any circumstances if they deem it necessary, or to be clear of the track if adequate protection is not provided.''

Paragraph (c) establishes a method of on-track safety for the lone worker, in which the roadway worker is capable of visually detecting the approach of a train and moving to a previously determined location of safety at least 15 seconds before the train arrives. A reference to the definition of individual train detection is useful to understand this concept.

It is important to note that the Advisory Committee decided that the use of individual train detection is appropriate only in limited circumstances. FRA has therefore drafted this section to prescribe strictly limited circumstances in which an individual may foul a track outside of working limits while definitely able to detect the approach of a train or other on-track equipment in ample time to move to a place of safety. This safety method requires the lone worker to be in a state of heightened awareness, since no other protection system will be in place to prevent one from being struck by a train or other on-track equipment. The corresponding subparagraphs to paragraph (c) provide detailed requirements for the use of this form of on-track safety.

Paragraph (f) prescribes the concept of a written Statement of On-track safety, prepared by the lone roadway worker. The reasoning behind this requirement is to assist the roadway worker in focusing on the nature of the task, the risks associated with the task, and the form of on-track safety necessary to safely carry out assigned duties.

21. Audible Warning from Trains: § 214.337

Section 214.337 requires audible warning from locomotives before trains approach roadway workers. The implementation of this requirement will necessitate railroad rules regarding notification to trains that roadway workers are on or about the track. This notification could take the form of portable whistle posts, train movement authorities, or highly visible clothing to identify roadway workers and increase their visibility. This section is not optional with a railroad, and FRA intends that it will preempt any local restrictions on the sounding of locomotive whistles.

22. Roadway Maintenance Machines: § 214.339

Section 214.339 addresses specific issues concerning roadway maintenance machines that need to be included in individual railroad program submissions. FRA decided to address the hazards associated with these machines separately from those associated with trains, as the nature of the hazard is different. Referencing the definition of this term is a good place to start to understand this section. Roadway maintenance machines are devices, the characteristics or use of which are unique to the railroad environment. The term includes both on-track and off-track machines. A roadway maintenance machine need not have a position for the operator on the machine nor need it have an operator at all; it could operate automatically, or semi-automatically.

This provision excludes hand-powered devices in order to distinguish between hand tools which are essentially portable, and devices which either are larger, move faster, or produce more noise than hand tools. Hand-held power tools are not included in the definition, but because of the noise they produce, and because of the attention that must be paid to their safe operation they are addressed specifically in § 214.335, On-track safety for lone workers.

Examples of devices covered by this section include, but are not limited to, crawler and wheel tractors operated near railroad tracks, track motor cars, ballast regulators, self-propelled tampers, hand-carried tampers with remote power units, powered cranes of all types, highway-rail cars and trucks while on or near tracks, snow plows-self propelled and pushed by locomotives, spreader-ditcher cars, locomotive

cranes, electric welders, electric generators, air compressors—on-track and off-track.

Roadway maintenance machines have a wide variety of configurations and characteristics, and new types are being developed regularly. Each type presents unique hazards and necessitates unique accident prevention measures. Despite the wide diversity of the subject matter, FRA attempted to provide some guidance for the establishment of on-track safety when using roadway maintenance machines.

FRA believes that it is most effective to promulgate a general requirement for on-track safety around roadway maintenance machines, and require that the details be provided by railroad management, conferring with their employees, and industry suppliers. Several railroads have adopted comprehensive rules that accommodate present and future machine types, as well as their own operating requirements. FRA has seen the text of such rules, as well as witnessed their application and believes that they can set examples for other railroads. The requirement for issuance of on-track safety procedures for various types of roadway maintenance machines may be met by general procedures that apply to a group of various machines, supplemented wherever necessary by any specific requirements associated with particular types or models of machines.

23. Training and Qualification, General: § 214.341

Section 214.341 requires that each roadway worker be given on-track safety training once every calendar year. Adequate training is integral to any safety program. Hazards exist along a railroad, not all of which are obvious through the application of common sense without experience or training. An employee who has not been trained to protect against those hazards presents a significant risk to both himself and others.

Roadway workers can be qualified to perform various duties, based on their training and demonstrated knowledge. Training will vary depending on the designation of a roadway worker. Furthermore, roadway workers should generally know the designations of others in their group, so that proper on-track safety protection arrangements can be made. Written or electronic records must be kept of these qualifications, available for inspection and copying by the Administrator.

The term ''demonstrated proficiency'' is used in this and other sections relative to employee qualification in a broad sense to mean that the employee being qualified would show to the employer sufficient understanding of the subject that the employee can perform the duties for which qualification is conferred in a safe manner. Proficiency may be demonstrated by successful completion of a written or oral examination, an interactive training program using a computer, a practical demonstration of understanding and ability, or an appropriate combination of these in accordance with the requirements of this subpart.

24. Training for All Roadway Workers: § 214.343

Section 214.343 represents the basic level of training required of all roadway workers who work around moving railroad trains and on-track equipment. All persons subject to this rule must have this training. This basic level of training is required in addition to any specialized training required for particular functions called for in §§ 214.345 through 214.353. Any testing required to demonstrate qualification need not be written, because the requirements can be fulfilled by a practical demonstration of ability and understanding.

25. Training and Qualification for Lone Workers: § 214.345

Section 214.345 requires a higher degree of qualification, as the lone worker is fully responsible for his or her own protection.

26. Training and Qualification of Watchmen/lookouts: § 214.347

Section 214.347 details the standards for qualification of a lookout, who by definition is responsible for the protection of others. The definition of watchman/lookout is useful to understand the functions of roadway workers discussed in this section. Watchmen/lookouts must be able to perform the proper actions in the most timely manner without any chance of error in order to provide proper protection for those who are placed in their care.

27. Training and Qualification of Flagmen: § 214.349

Section 214.349 requires that flagmen be qualified on the operating rules of the railroad on which they are working. Referencing the definition of flagman would be useful to identify the class of roadway workers discussed in this section. Generally, flagmen are already required to be qualified on the operating rules that apply to their work. Flagging is an exacting procedure, and a flagman must be ready to act properly at all times in order to provide proper protection for those under his care. The distinction between flagmen and watchmen/lookouts should be noted, in that flagmen function to restrict or stop the movement of trains, while watchmen/lookouts detect the approach of trains and provide warning thereof to other roadway workers.

28. Training and Qualification of Roadway Workers Who Provide On-track Safety for Roadway Work Groups: § 214.351

Section 214.349 details training standards applicable to the roadway worker who is qualified to provide on-track safety for roadway work groups. This roadway worker has the most critical responsibilities under this subpart. This individual must be able to apply the proper on-track safety rules and procedures in various circumstances, to communicate with other railroad employees regarding on-track safety procedures, and to supervise other roadway workers in the performance of their on-track safety responsibilities.

This section is unique in this subpart in requiring a recorded examination as part of the qualification process. This requirement reflects the additional responsibility of this position. The recorded examination might be written, or it might be, for example, a computer file with the results of an interactive training course.

29. Training and Qualification in On-track Safety for Operators of Roadway Maintenance Machines: § 214.353

Section 214.353 requires training for those roadway workers operating roadway maintenance machines. As noted earlier, there is a wide variety of equipment requiring specific knowledge. However, FRA determined that establishing minimum qualifications closely associated with the type of machine to be operated, and the circumstances and conditions under which it is to be operated, was necessary.

Environmental Impact

FRA has evaluated these proposed regulations in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 et seq) and related directives. These proposed regulations meet the criteria that establish this as a non-major action for environmental purposes.

Appendix

FRA plans to revise Appendix A to Part 214.—Schedule of Civil Penalties, to include penalties for violations of the provisions of this Subpart to be included in the final rule. Because such penalty schedules are statements of policy, notice and comment are not required prior to their issuance. (see 5 U.S.C. 553(b)(3)(A)). Nevertheless, interested parties are welcome to submit their views on what penalties may be appropriate.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures. It is considered to be significant under both Executive Order 12866 and DOT policies an procedures (44 FR 11034; February 26, 1979). FRA has prepared and placed in the docket a regulatory analysis addressing the economic impact of the proposed rule. It may be inspected and photocopied at Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Room 8201, Washington, D.C. 20590. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at the above address.

Consistent with the mandate of Executive Order 12866 for regulatory reform, FRA conducted a Negotiated Rulemaking which provided the basis for this proposed rule. This collaborative effort included representatives from the railroad industry and railroad labor, along with an agency representative as members on a Federal Advisory Committee. This Advisory Committee held several negotiation sessions throughout the past year to reach consensus on the concepts that this proposed rule would embody. As envisioned by regulatory reform, public participation was encouraged by holding open Advisory Committee meetings. This negotiated Rulemaking's success has clearly met many of the objectives highlighted in this Executive Order.

As part of the benefit-cost analysis the FRA has assessed quantitative measurements of costs and benefits expected from the adoption of the proposed rule. The Net Present Value (NPV) of the net benefits is 28.7 million. Over a ten year period, the NPV of the estimated quantifiable societal benefits is $252.6 million, and the NPV of the estimated societal quantified costs is $223.87 million.

The NPV of major benefits anticipated from adopting the proposed rule include:

- $10 million from averted roadway worker injuries;
- $174 million from worker productivity increases that are a due to a safer working environment;
- $62 million from averted roadway workers fatalities (a statsitical estimation of 32.6 lives saved); and
- $1.5 million from the reduction in lost work days.

The NPV of major costs (including estimated paperwork burdens) over the ten year period expected to accrue from adopting the proposed rule include:

- $26 million for additional dispatching resources;
- $47 million for watchmen/lookouts;
- $22 million for miscellaneous forms of positive protection;
- $63 million for job briefings; and
- $53 million for the various types of roadway training.

Sections 8.0—10.0 of this analysis outline the above findings in greater detail. FRA anticipates significant other qualitative benefits accruing from the proposed rule which are not factored into the quantified benefit-cost analysis. These non-quantified benefits include a possible increase in the capacity or volume of some rail lines, and an improved employee morale.

FRA's quantified cost estimate includes time alloted for daily job briefings. Many railroads currently conduct job briefings and others have alloted the time for such briefings. FRA contends that the proposed rule will structure time already alloted or spent in job briefings. Although FRA considered this 2 minute briefing a cost and included it within the quantified benefit-cost calculations, it is conceivable that structuring the existing job briefing time actually means no additional cost. The job briefing requirement essentially mandates a more efficient use of already allotted time.

With respect to the quantified benefits anticipated, expected savings from a one percent increase in workplace productivity was included. FRA estimates that productivity of roadway workers should increase because adoption of the proposed rule will decrease the amount of risk that exists in their work environment. This is especially true in certain work areas where the risk is the highest such as within interlocking limits. Individual worker productivity should increase since there will be less time and concentration being focused on whether a train is approaching. The requirements for positive protection in this rule will provide this mental and physical relief in numerous roadway work situations. The productivity increases will be reflected in less time needed to complete work that will be performed on or near the track. FRA estimates that a one percent increase in rail workplace productivity, or less than 5 minutes per day, is a reasonable and conservative estimate.

FRA's sensitivity assessment conducted as part of this regulatory impact analysis (see Section 14.0) calculates a three percent increase in productivity as well. If a three percent productivity is achieved as a result of this rulemaking the expected quantified benefits would increase to a NPV of $600.1 million. The sensitivity assessment also shows estimated benefits given an assumption of no increased productivity. FRA does not believe this is a reasonable assumption. If productivity did not increase at all as a result of this rule and the other non-quantified benefits discussed above are not considered then the benefits would be reduced by a NPV of $174 million.

FRA also conducted sensitivity assessments on key components of the cost estimates. The cost estimates were sensitive to assumptions about the incremental time for job briefings (including the proportion of briefings that take place during ''down time'') and the number of additional employee years necessary to comply with the proposal. Under alternative assumptions regarding these parameters, the discounted 10-year cost estimates range from $187 million to $338 million.

FRA's regulatory impact analysis finds the proposed rule to be cost beneficial (greater benefits than costs), and further identifies substantial qualitative benefits. The recommendation of the Roadway Worker Safety Federal Advisory Committee that the FRA adopt the proposed rule reflects the consensus of the rail labor and management representatives on the committee that the proposed rule is beneficial.

As previously noted, FRA is allowing 60 days for comments and invites public comment on the issue of regulatory impact. FRA seeks comment and or data to help identify or quantify other factors that may affect the benefits or costs of the proposal, including alternatives that were not explored by the advisory committee and any costs or benefits associated with such alternatives. FRA specifically invites comments from contractors and tourist railroads on regulatory impact, since they were not members of the Advisory Committee. Comments received after May 13, 1996 will be considered to the extent possible

without incurring additional expense or delay. In addition, a public hearing will be scheduled only if requested by April 15, 1996. It should be noted that a final rule may change based on comments received. However, FRA will take the appropriate prompt action at the close of the comment period.

Federalism Implications

This proposed rule has been analyzed in accordance with the principles of Executive Order 12612 (''Federalism''). As noted previously, there are potential preemption issues resulting from a provision of this proposed rule, requiring audible warning before entering worksites. Various States and local authorities have ''whistle bans'' preventing railroads from sounding whistles or ringing locomotive bells while operating through those communities. FRA acknowledges an impact on scattered States and localities throughout the country, depending on the time of day and the frequency with which track maintenance occurs. However, these measures are necessary to protect roadway workers from possible death and injury. Sufficient Federalism implications have been identified to warrant the preparation of a Federalism Assessment and it has been placed in the docket. It may be inspected and photocopied at Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Room 8201, Washington, D.C. 20590. Photocopies may also be obtained by submitting written requests to the FRA Docket Clerk at the above address.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of proposed rules to assess their impact on small entities. In reviewing the economic impact of the proposed rule, FRA has concluded that it will have a moderate economic impact on small entities. There are no direct or indirect adverse economic impacts for small units of government, businesses, or other organizations.

Paperwork Reduction Act

The proposed rule contains information collection requirements. FRA will submit these information collection requirements to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d) *et seq.*). FRA has endeavored to keep the burden associated with this proposal as simple and minimal as possible. The proposed sections that contain information collection requirements and the estimated time to fulfill each requirement are as follows:

Proposed section	Brief description	Estimated average time
214.303	Railroad On-Track Safety Programs.	2,000 hrs. Class I.
214.309	.....	1,400 hrs. Class II.
214.337	.....	250 hrs. Class III.
214.307	.....	3,500 hrs. Blanket Class II.
214.311	.....	3,000 hrs. Blanket Class III.
214.329		
214.313	Responsibility of Individual Road Workers.	4 hrs.
214.315	Supervision and Communications—Job Briefings.	2 minutes.
214.333		
214.319	Working Limits	Usual & Customary Procedure—No new paperwork.
214.321	Exclusive Track Occupancy—Working Limits Authorities.	40 seconds.
214.323	Foul Time Working Limit Procedures.	Usual & Customary Procedure—No new paperwork.
214.325	Inaccessible Track.	10 minutes.
214.327	Train Approach Warning Provided by Watchman/Lookouts.	15 seconds.
214.335	On-Track Safety Procedures for Lone Workers.	30 seconds.
214.339	Training Requirements—Record of Qualifications.	2 minutes.
214.343		
214.345		
214.347		
214.349		
214.351		

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. FRA solicits comments on the accuracy of the estimates, the practical utility of the information, and alternative methods that might be less burdensome to obtain this information. Persons desiring to comment on this topic should submit their views in writing to Gloria D. Swanson, Federal Railroad Administration, 400 Seventh Street, S.W., Washington D.C. 20590; and to the Office and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer (DOT/FRA), New Executive Office Bldg., 726 Jackson Place, N.W., Washington, D.C. 20530. Copies of any such comments should also be submitted to the docket of this rulemaking at the address provided above.

List of Subjects in 49 CFR Part 214

Bridges, Occupational safety and health, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Proposed Rule

In consideration of the foregoing, FRA proposes to amend Part 214, Title 49, Code of Federal Regulations as follows:

PART 214—[AMENDED]

1. Revise the authority citation for Part 214 to read as follows:

Authority: 49 U.S.C. Chs. 210–213; 49 CFR 1.49.

2. Amend § 214.7 by removing the paragraph designations for each definition, removing the definition for Railroad employee or employee, and adding new definitions in alphabetical order to read as follows:

§ 214.7 Definitions.

Adjacent tracks mean two or more tracks with track centers spaced less than 25 feet apart.

* * * * *

Class I, Class II, and Class III have the meaning assigned by, Title 49 CFR part 1201, General Instructions 1–1.

* * * * *

Control operator means the railroad employee in charge of a remotely controlled switch or derail, an interlocking, or a controlled point, or a segment of controlled track.

Controlled track means track upon which the railroad's operating rules require that all movements of trains must be authorized by a train dispatcher or a control operator.

* * * * *

Definite train location means a system for establishing on-track safety by providing roadway workers with information about the earliest possible time that approaching trains may pass specific locations as prescribed in § 214.329.

Effective securing device when used in relation to a manually operated switch or derail means one which is:

(1) Vandal resistant;

(2) Tamper resistant; and

(3) Designed to be applied, secured, uniquely tagged and removed only by the class, craft or group of employees for whom the protection is being provided.

Employee means an individual who is engaged or compensated by a railroad or by a contractor to a railroad to perform any of the duties defined in this part.

Employer means a railroad, or a contractor to a railroad, that directly engages or compensates individuals to perform any of the duties defined in this part.

* * * * *

Exclusive track occupancy means a method of establishing working limits on controlled track in which movement authority of trains and other equipment is withheld by the train dispatcher or control operator, or restricted by flagmen, as prescribed in § 214.321.

Flagman, when used in relation to roadway worker safety, means an employee designated by the railroad to direct or restrict the movement of trains past a point on a track to provide on-track safety for roadway workers, while engaged solely in performing that function.

Foul time is a method of establishing working limits on controlled track in which a roadway worker is notified by the train dispatcher or control operator that no trains will operate within a specific segment of controlled track until the roadway worker reports clear of the track, as prescribed in § 214.323.

Fouling a track means the placement of an individual or an item of equipment in such proximity to a track that the individual or equipment could be struck by a moving train or on-track equipment, or in any case is within four feet of the field side of the near running rail.

* * * * *

Inaccessible track means a method of establishing working limits on non-controlled track by physically preventing entry and movement of trains and equipment.

Individual train detection means a procedure by which a lone worker acquires on-track safety by seeing approaching trains and leaving the track before they arrive and which may be used only under circumstances strictly defined in this part.

Informational line-up of trains means Information provided in a prescribed format to a roadway worker by the train dispatcher regarding movements of trains authorized or expected on a specific segment of track during a specific period of time.

* * * * *

Lone worker means an individual roadway worker who is not being afforded on-track safety by another roadway worker, who is not a member of a roadway work group, and who is not engaged in a common task with another roadway worker.

* * * * *

Non-controlled track means track upon which trains are permitted by railroad rule or special instruction to move without receiving authorization from a train dispatcher or control operator.

On-track safety means a state of freedom from the danger of being struck by a moving railroad train or other railroad equipment, provided by operating and safety rules that govern track occupancy by personnel, trains and on-track equipment.

* * * * *

Qualified means a status attained by an employee who has successfully completed any required training for, has demonstrated proficiency in, and has been authorized by the employer to perform the duties of a particular position or function.

* * * * *

Railroad bridge worker or *bridge worker* means any employee of, or employee of a contractor of, a railroad owning or responsible for the construction, inspection, testing, or maintenance of a bridge whose assigned duties, if performed on the bridge, include inspection, testing, maintenance, repair, construction, or reconstruction of the track, bridge structural members, operating mechanisms and water traffic control systems, or signal, communication, or train control systems integral to that bridge.

Restricted speed means a speed that will permit a train or other equipment to stop within one-half the range of vision of the person operating the train or other equipment, but not exceeding 20 miles per hour, unless further restricted by the operating rules of the railroad.

Roadway maintenance machine means a device powered by any means of energy other than hand power which is being used on or near railroad track for maintenance, repair, construction or inspection of track, bridges, roadway, signal, communications, or electric traction systems. Roadway maintenance machines may have road or rail wheels or may be stationary.

Roadway work group means two or more roadway workers organized to work together on a common task.

Roadway worker means any employee of a railroad, or of a contractor to a railroad, whose duties include inspection, construction, maintenance or repair of railroad track, bridges, roadway, signal and communication systems, electric traction systems, roadway facilities or roadway maintenance machinery on or near track or with the potential of fouling a track, and flagmen and watchmen/lookouts as defined in this part.

* * * * *

Train approach warning means a method of establishing on-track safety by warning roadway workers of the approach of trains in ample time for them to move to or remain in a place of safety in accordance with the requirements of this part.

Train dispatcher means the railroad employee assigned to control and issue orders governing the movement of trains on a specific segment of railroad track in accordance with the operating rules of the railroad that apply to that segment of track.

Watchman/lookout means an employee who has been annually trained and qualified to provide warning to roadway workers of approaching trains or on-track equipment. Watchmen/lookouts shall be properly equipped to provide visual and auditory warning such as whistle, air horn, white disk, red flag, lantern, fusee. A watchman/lookout's sole duty is to look out for approaching trains/on-track equipment and provide at least fifteen seconds advanced warning to employees before arrival of trains/on-track equipment.

Working limits means a segment of track with definite boundaries established in accordance with this rule upon which trains and engines may move only as authorized by the roadway worker having control over that defined segment of track. Working limits may be established through ''exclusive track occupancy,'' ''inaccessible track,'' or ''foul time'' as defined in this section.

3. Add subpart C to read as follows:

Subpart C—Roadway Worker Protection

Sec.
214.301 Purpose and scope.
214.303 Railroad on-track safety programs, generally.
214.305 Effective dates.
214.307 Review and approval of individual on-track safety programs by FRA.
214.309 On-track safety program documents.
214.311 Responsibility of employers.
214.313 Responsibility of individual roadway workers.

214.315 Supervision and communication.
214.317 On-track safety procedures, generally.
214.319 Working limits, generally.
214.321 Exclusive track occupancy.
214.323 Foul time.
214.325 Inaccessible track.
214.327 Train approach warning provided by watchmen/lookouts.
214.329 Definite train location.
214.331 Informational line-ups of trains.
214.333 On-track safety procedures for roadway work groups.
214.335 On-track safety procedures for lone workers.
214.337 Audible warning from trains.
214.339 Roadway maintenance machines.
214.341 Training and qualification, general.
214.343 Training for all roadway workers.
214.345 Training and qualification for lone workers.
214.347 Training and qualification of watchmen/lookouts.
214.349 Training and qualification of flagmen.
214.351 Training and qualification of roadway workers who provide on-track safety for roadway work groups.
214.353 Training and qualification in on-track safety for operators of roadway maintenance machines.

Subpart C—Roadway Worker Protection

§ 214.301 Purpose and scope.

(a) The purpose of this subpart is to prevent accidents and casualties caused by moving railroad cars, locomotives or roadway maintenance machines striking roadway workers or roadway maintenance machines.

(b) This subpart prescribes minimum safety standards for roadway workers. Each railroad and railroad contractor may prescribe additional or more stringent operating rules, safety rules, and other special instructions that are consistent with this subpart.

(c) This subpart prescribes safety standards related to the movement of roadway maintenance machines where such movements affect the safety of roadway workers. This subpart does not otherwise affect movements of roadway maintenance machines that are conducted under the authority of a train dispatcher, a control operator, or the operating rules of the railroad.

§ 214.303 Railroad on-track safety programs, generally.

(a) Each railroad to which this part applies shall adopt and implement a program that will afford on-track safety to all roadway workers whose duties are performed on that railroad. Each such program shall provide for the levels of protection specified in this subpart.

(b) Each on-track safety program adopted to comply with this part shall include procedures to be used by each railroad for monitoring effectiveness of and compliance with the program.

§ 214.305 Effective dates.

Each program adopted by a railroad to comply with this Rule shall be effective not later than the date specified in the following schedule:

(a) For each Class I railroad (including National Railroad Passenger Corporation) and each railroad providing commuter service in a metropolitan or suburban area, June 1, 1996.

(b) For each Class II railroad, September 1, 1996.

(c) For each Class III railroad, switching and terminal railroad, and any railroad not otherwise classified, December 1, 1996.

(d) For each railroad commencing operations after the pertinent date specified in this paragraph, the date on which operations commence.

§ 214.307 Review and approval of individual on-track safety programs by FRA.

(a) Each railroad shall notify the Associate Administrator for Safety, Federal Railroad Administration, RRS–15, 400 Seventh Street SW, Washington, DC 20590, not less than one month before its on-track safety program becomes effective. The notification shall include the effective date of the program, the address of the office at which the program documents are available for review by representatives of the Federal Railroad Administrator, and the name, title, address and telephone number of the primary person to be contacted with regard to review of the program.

(b) After receipt of the notification from the railroad, the Federal Railroad Administration will conduct a formal review of the on-track safety program. The Federal Railroad Administration will notify the primary railroad contact person of the results of the review, whether the on-track safety program has been approved by the Administrator, and if not approved, the specific points in which the program is deficient.

(c) A railroad's on-track safety program will take effect by the date established in § 214.305, without regard to the date of review or approval by the Federal Railroad Administration.

§ 214.309 On-track safety program documents.

Rules and operating procedures governing track occupancy and protection shall be maintained together in one manual and be readily available to all roadway workers. Each roadway worker responsible for the on-track safety of others, and each lone worker, shall be provided with and shall maintain a copy of the program document.

§ 214.311 Responsibility of employers.

(a) Each employer is responsible for the understanding and compliance by its employees with its rules and the requirements of this part.

(b) Each employer shall guarantee each employee the absolute right to challenge in good faith whether the on-track safety procedures to be applied at the job location comply with the rules of the operating railroad, and to remain clear of the track until the challenge is resolved.

(c) Each employer shall have in place a written procedure to achieve prompt and equitable resolution of challenges made in accordance with paragraph (b) of this section and § 214.313(d).

§ 214.313 Responsibility of individual roadway workers.

(a) Each roadway worker is responsible for following the on-track safety rules of the railroad upon which the roadway worker is located.

(b) A roadway worker shall not foul a track except when necessary for the performance of duty.

(c) Each roadway worker is responsible to ascertain that on-track safety is being provided before fouling a track.

(d) Each roadway worker may refuse any directive to violate an on-track safety rule, and shall inform the employer in accordance with § 214.311 whenever the roadway worker makes a good faith determination that on-track safety provisions to be applied at the job location do not comply with the rules of the operating railroad.

§ 214.315 Supervision and communication.

(a) When an employer assigns duties to a roadway worker that call for that employee to foul a track, the employer shall provide the employee with a job briefing that includes information on the means by which on-track safety is to be provided, and instruction on the on-track safety procedures to be followed.

(b) A job briefing for on-track safety shall be deemed complete only after the roadway worker has acknowledged understanding of the on-track safety procedures and instructions presented.

(c) Every roadway work group whose duties require fouling a track shall have one roadway worker designated by the employer to provide on-track safety for all members of the group. The designated person shall be qualified under the rules of the railroad that conducts train operations on those

tracks to provide the protection necessary for on-track safety of each individual in the group. The responsible person may be designated generally, or specifically for a particular work situation.

(d) Before any member of a roadway work group fouls a track, the designated person providing on-track safety for the group under paragraph (c) of this section shall inform each roadway worker of the on-track safety procedures to be used and followed during the performance of the work at that time and location. Each roadway worker shall again be so informed at any time the on-track safety procedures change during the work period. Such information shall be given to all roadway workers affected before the change is effective, except in cases of emergency. Any roadway workers who, because of an emergency, cannot be notified in advance shall be immediately warned to leave the fouling space and shall not return to the fouling space until on-track safety is re-established.

(e) Each lone worker shall communicate at the beginning of each duty period with a supervisor or another designated employee to receive a job briefing and to advise of his or her planned itinerary and the procedures that he or she intends to use for on-track safety. When communication channels are disabled, the job briefing shall be conducted as soon as possible after the beginning of the work period when communications are restored.

§ 214.317 On-track safety procedures, generally.

Each employer subject to the provisions of this part shall provide on-track safety for roadway workers by adopting a program that contains specific rules for protecting roadway workers that comply with the provisions of §§ 214.319 through 214.335.

§ 214.319 Working limits, generally.

Working limits established on controlled track shall conform to the provisions of § 214.321 Exclusive track occupancy, or § 214.323 Foul time. Working limits established on non-controlled track shall conform to the provisions of § 214.325 Inaccessible track. Working limits established under any procedure shall, in addition, conform to the following provisions:

(a) Only a roadway worker who is qualified in accordance with § 214.351 shall establish or have control over working limits for the purpose of establishing on-track safety.

(b) Only one roadway worker shall have control over working limits on any one segment of track.

(c) Movements of trains and roadway maintenance machines within working limits shall be made only under the direction of the roadway worker having control over the working limits. Such movements shall be at restricted speed unless a higher speed has been specifically authorized by the roadway worker in charge of the working limits.

(d) All affected roadway workers shall be notified before working limits are released for the operation of trains. Working limits shall not be released until all affected roadway workers have either left the track or have been afforded on-track safety through train approach warning in accordance with § 214.327.

§ 214.321 Exclusive track occupancy.

Working limits established on controlled track through the use of exclusive track occupancy procedures shall comply with the following requirements:

(a) The working limits shall be placed under the control of one roadway worker, who is designated in accordance with § 214.351, by the train dispatcher or control operator in charge of the track.

(b) The authority for exclusive track occupancy given to the roadway worker in charge of the working limits shall be transmitted on a written or printed document directly, by relay through a designated employee, in a data transmission, or by oral communication, to the roadway worker by the train dispatcher or control operator in charge of the track:

(1) Where authority for exclusive track occupancy is transmitted orally, the authority shall be written as received by the roadway worker in charge and repeated to the issuing employee for verification.

(2) The roadway worker in charge of the working limits shall maintain possession of the written or printed authority for exclusive track occupancy while the authority for the working limits is in effect.

(3) The train dispatcher or control operator in charge of the track shall make a written or electronic record of all authorities issued to establish exclusive track occupancy.

(c) The extent of working limits established through exclusive track occupancy shall be defined by one of the following physical features clearly identifiable to a locomotive engineer or other person operating a train or railroad equipment:

(1) A flagman with instructions and capability to hold all trains and equipment clear of the working limits.

(2) A fixed signal that displays an aspect indicating ''Stop''.

(3) A station shown in the time-table, and identified by name with a sign, beyond which train movement is prohibited by train movement authority or the provisions of a direct train control system.

(4) A clearly identifiable milepost beyond which train movement is prohibited by train movement authority or the provisions of a direct train control system.

(5) A clearly identifiable physical location prescribed by the operating rules of the railroad which that trains may not pass without proper authority.

§ 214.323 Foul time.

Working limits established on controlled track through the use of foul time procedures shall comply with the following requirements:

(a) Foul time may be given orally or in writing by the train dispatcher or control operator only after that employee has withheld the authority of all trains to move into the working limits during the foul time period.

(b) Each roadway worker to whom foul time is transmitted orally shall repeat the track number, track limits and time limits of the foul time to the issuing employee for verification before the foul time becomes effective.

(c) Each roadway worker who obtains foul time shall first have been trained and qualified by the operating railroad to provide on-track safety to roadway work groups or as a lone worker.

(d) The train dispatcher or control operator shall not permit the movement of trains or other on-track equipment onto the working limits protected by foul time until the roadway worker who obtained the foul time has reported clear of the track.

§ 214.325 Inaccessible track.

Working limits on non-controlled track shall be established by rendering the track within working limits physically inaccessible to trains. No operable locomotives or other items of on-track equipment, except those moving under the direction of the roadway worker in charge, shall be located within working limits on non-controlled track. The extent of working limits established as inaccessible track shall be defined by one of the following physical features:

(a) A flagman with instructions and capability to hold all trains and equipment clear of the working limits.

(b) A switch or derail aligned to prevent access to the working limits and

secured with an effective securing device by the roadway worker in charge of the working limits.

(c) A remotely controlled switch aligned to prevent access to the working limits and secured by the control operator of such remotely controlled switch by application of a locking or blocking device to the control of that switch, when:

(1) The control operator has secured the remotely controlled switch by applying a locking or blocking device to the control of the switch; and

(2) The control operator has notified the roadway worker who has established the working limits that the requested protection has been provided; and

(3) The control operator is not permitted to remove the locking or blocking device from the control of the switch until receiving permission to do so from the roadway worker who established the working limits.

(d) A discontinuity in the rail that precludes passage of trains or engines into the working limits.

§ 214.327 Train approach warning provided by watchmen/lookouts.

Roadway workers in a roadway work group who foul any track outside of working limits shall be given warning of approaching trains and engines by one or more watchmen/lookouts in accordance with the following provisions:

(a) Train approach warning shall be given in sufficient time to enable each roadway worker to move to and occupy a previously arranged place of safety not less than 15 seconds before a train moving at the maximum speed authorized on that track can pass the location of the roadway worker.

(b) Watchmen/lookouts assigned to provide train approach warning shall devote full attention to detecting the approach of trains and communicating a warning thereof, and shall not be assigned any other duties while functioning as watchmen/lookouts.

(c) The means used by a watchman/lookout to communicate a train approach warning shall be distinctive and shall clearly signify to all recipients of the warning that a train or other on-track equipment is approaching.

(d) Every roadway worker who depends upon train approach warning for on-track safety shall maintain a position that will enable him or her to receive a train approach warning communicated by a watchman/lookout at any time while on-track safety is provided by train approach warning.

(e) Watchmen/lookouts shall communicate train approach warnings by a means that does not require a warned employee to be looking in any particular direction at the time of the warning, and that can be detected by the warned employee regardless of noise or distraction of work.

(f) Every roadway worker who is assigned the duties of a watchman/lookout shall first be trained, qualified and designated in writing by the employer to do so in accordance with the provisions of § 214.345.

(g) Every watchman/lookout shall be provided by the employer with the equipment necessary for compliance with the on-track safety duties which the watchman/lookout will perform.

§ 214.329 Definite train location.

A roadway worker may establish on-track safety by using definite train location only where permitted by and in accordance with the following provisions:

(a) A Class I railroad may only use definite train location to establish on-track safety at points where such procedures were in use on the effective date of the final rule.

(b) Each Class I railroad shall include in its on-track safety program submitted to FRA in accordance with § 214.307 a schedule for phase-out of the use of definite train location to establish on-track safety.

(c) A railroad other than a Class I railroad may use definite train location to establish on-track safety on subdivisions only where:

(1) such procedures were in use on the effective date of this rule; or

(2) the number of trains operated on the subdivision does not exceed:

(i) three during any nine-hour period in which roadway workers are on duty; and

(ii) four during any twelve-hour period in which roadway workers are on duty.

(d) Definite train location shall only be used to establish on-track safety according to the following provisions:

(1) Definite train location information shall be issued only by the one train dispatcher who is designated to authorize train movements over the track for which the information is provided.

(2) A definite train location list shall indicate all trains to be operated on the track for which the list is provided, during the time for which the list is effective.

(3) Trains not shown on the definite train location list shall not be operated on the track for which the list is provided, during the time for which the list is effective, until each roadway worker to whom the list has been issued has been notified of the train movement, has acknowledged the notification to the train dispatcher, and has canceled the list. A list thus canceled shall then be invalid for on-track safety.

(4) Definite train location shall not be used to establish on-track safety within the limits of a manual interlocking, or on track over which train movements are governed by a Traffic Control System or by a Manual Block System.

(5) Roadway workers using definite train location for on-track safety shall not foul a track within ten minutes before the earliest time that a train is due to depart the last station at which time is shown in approach to the roadway worker's location nor until that train has passed the location of the roadway worker.

(6) A railroad shall not permit a train to depart a location designated in a definite train location list before the time shown therein.

(7) Each roadway worker who uses definite train location to establish on-track safety must be qualified on the relevant physical characteristics of the territory for which the train location information is provided.

§ 214.331 Informational line-ups of trains.

(a) A railroad is permitted to include informational line-ups of trains in its on-track safety program for use only on subdivisions of that railroad upon which such procedure was in effect on March 14, 1996.

(b) Each procedure for the use of informational line-ups of trains found in an on-track safety program shall include all provisions necessary to protect roadway workers using the procedure against being struck by trains or other on-track equipment.

(c) Each on-track safety program that provides for the use of informational line-ups shall include a schedule for discontinuance of the procedure by a definite date.

§ 214.333 On-track safety procedures for roadway work groups.

(a) No employer subject to the provisions of this part shall require or permit a roadway worker who is a member of a roadway work group to foul a track unless on-track safety is provided by either working limits, train approach warning, or definite train location in accordance with the applicable provisions of §§ 214.319, 214.321, 213.323, 214.325, 214.327, 214.329 and 214.331.

(b) No roadway worker who is a member of a roadway work group shall foul a track without having been informed by the roadway worker responsible for the on-track safety of the

roadway work group that on-track safety is provided.

(c) Roadway work groups engaged in large-scale maintenance or construction shall be provided with train approach warning in accordance with § 214.327 on adjacent tracks that are not included within working limits.

§ 214.335 On-track safety procedures for lone workers.

(a) A lone worker who fouls a track while performing routine inspection or minor correction may use individual train detection to establish on-track safety only where permitted by this section and the on-track safety program of the railroad.

(b) A lone worker retains an absolute right to use on-track safety procedures other than individual train detection if he or she deems it necessary, and to occupy a place of safety until such other form of on-track safety can be established.

(c) Individual train detection may be used to establish on-track safety only:

(1) by a lone worker who has been trained, qualified, and designated to do so by the employer in accordance with § 214.345;

(2) while performing routine inspection and minor correction work;

(3) on track outside the limits of a manual interlocking, a controlled point, or a remotely controlled hump yard facility;

(4) where the lone worker is able to visually detect the approach of a train moving at the maximum speed authorized on that track, and move to a previously determined place of safety, not less than 15 seconds before the train would arrive at the location of the lone worker;

(5) where no power-operated tools or roadway maintenance machines are in use within the hearing of the lone worker; and

(6) where the ability of the lone worker to hear and see approaching trains and other on-track equipment is not impaired by background noise, lights, precipitation, fog, passing trains, or any other physical conditions.

(d) The place of safety to be occupied by a lone worker upon the approach of a train may not be on a track, unless working limits are established on that track.

(e) A lone worker using individual train detection for on-track safety while fouling a track may not occupy a position or engage in any activity that would interfere with that worker's ability to maintain a vigilant lookout for, and detect the approach of, a train moving in either direction as prescribed in this section.

(f) A lone worker who uses individual train detection to establish on-track safety shall first complete a written Statement of On-track Safety. The Statement shall designate the limits of the track for which it is prepared and the date and time for which it is valid. The statement shall show the maximum authorized speed of trains within the limits for which it is prepared, and the sight distance that provides the required warning of approaching trains. The lone worker using individual train detection to establish on-track safety shall produce the Statement of On-track Safety when requested by a representative of the Federal Railroad Administrator.

§ 214.337 Audible warning from trains.

Each railroad shall require that the locomotive whistle be sounded, and the locomotive bell be rung, by trains approaching roadway workers on or about the track. Such audible warning shall not substitute for on-track safety procedures prescribed in this part.

§ 214.339 Roadway maintenance machines.

(a) Each employer shall include in its on-track safety program specific provisions for the safety of roadway workers who operate or work near roadway maintenance machines. Those provisions shall address:

(1) Training and qualification of operators of roadway maintenance machines.

(2) Establishment and issuance of safety procedures both for general application and for specific types of machines.

(3) Communication between machine operators and roadway workers assigned to work near or on roadway maintenance machines.

(4) Spacing between machines to prevent collisions.

(5) Space between machines and roadway workers to prevent personal injury.

(6) Maximum working and travel speeds for machines dependent upon weather, visibility, and stopping capabilities.

(b) Instructions for the safe operation of each roadway machine shall be provided and maintained with each machine large enough to carry the instruction document:

(1) No roadway worker shall operate a roadway maintenance machine without having been trained in accordance with § 214.353.

(2) No roadway worker shall operate a roadway maintenance machine without having complete knowledge of the safety instructions applicable to that machine.

(3) No employer shall assign roadway workers to work near roadway machines unless the roadway worker has been informed of the safety procedures applicable to persons working near the roadway machines and has acknowledged full understanding.

(c) Components of roadway maintenance machines shall be kept clear of trains passing on adjacent tracks. Where operating conditions permit roadway maintenance machines to be less than four feet from the rail of an adjacent track, the on-track safety program of the railroad shall include the procedural instructions necessary to provide adequate clearance between the machine and passing trains.

§ 214.341 Training and qualification, general.

(a) No employer shall assign an employee to perform the duties of a roadway worker, and no employee shall accept such assignment, unless that employee has received training in the on-track safety procedures associated with the assignment to be performed, and that employee has demonstrated the ability to fulfill the responsibilities for on-track safety that are required of an individual roadway worker performing that assignment.

(b) Each employer shall provide to all roadway workers in its employ initial or recurrent training once every calendar year on the on-track safety rules and procedures that they are required to follow.

(c) Railroad employees other than roadway workers, who are associated with on-track safety procedures, and whose primary duties are concerned with the movement and protection of trains, shall be trained to perform their functions related to on-track safety through the training and qualification procedures prescribed by the operating railroad for the primary position of the employee, including maintenance of records and frequency of training.

(d) Each employer of roadway workers shall maintain written or electronic records of each roadway worker qualification in effect. Each record shall include the name of the employee, the type of qualification made, and the most recent date of qualification. These records shall be kept available for inspection and copying by the Federal Railroad Administrator during regular business hours.

§ 214.343 Training for all roadway workers.

The training of all roadway workers shall include, as a minimum, the following:

(a) Recognition of railroad tracks and understanding of the space around them within which on-track safety is required.

(b) The functions and responsibilities of various persons involved with on-track safety procedures.

(c) Proper compliance with on-track safety instructions given by persons performing or responsible for on-track safety functions.

(d) Signals given by watchmen/lookouts, and the proper procedures upon receiving a train approach warning from a lookout.

(e) The hazards associated with working on or near railroad tracks, including review of on-track safety rules and procedures.

§ 214.345 Training and qualification for lone workers.

Each lone worker shall be trained and qualified by the employer to establish on-track safety in accordance with the requirements of this section, and must be authorized to do so by the railroad that conducts train operations on those tracks.

(a) The training and qualification for lone workers shall include, as a minimum, consideration of the following factors:

(1) Detection of approaching trains and prompt movement to a place of safety upon their approach.

(2) Determination of the distance along the track at which trains must be visible in order to provide the prescribed warning time.

(3) The rules and procedures prescribed by the railroad for individual train detection, establishment of working limits, and definite train location.

(4) The on-track safety procedures to be used in the territory on which the employee is be qualified and permitted to work alone.

(b) Initial and periodic qualification of a lone worker shall be evidenced by demonstrated proficiency .

§ 214.347 Training and qualification of watchmen/lookouts.

(a) The training and qualification for roadway workers assigned the duties of watchmen/lookouts shall include, as a minimum, consideration of the following factors:

(1) The detection and recognition of approaching trains.

(2) The effective warning of roadway workers of the approach of trains.

(3) The determination of the distance along the track at which trains must be visible in order to provide the prescribed warning time.

(4) The rules and procedures of the railroad to be used for train approach warning.

(b) Initial and periodic qualification of a watchman/lookout shall be evidenced by demonstrated proficiency .

§ 214.349 Training and qualification of flagmen.

(a) The training and qualification for roadway workers assigned the duties of flagmen shall include, as a minimum, the content and application of the operating rules of the railroad pertaining to giving proper stop signals to trains and holding trains clear of working limits.

(b) Initial and periodic qualification of a flagman shall be evidenced by demonstrated proficiency .

§ 214.351 Training and qualification of roadway workers who provide on-track safety for roadway work groups.

(a) The training and qualification of roadway workers who provide for the on-track safety of groups of roadway workers through establishment of working limits or the assignment and supervision of watchmen/lookouts or flagmen shall include, as a minimum:

(1) All the on-track safety training and qualification required of the roadway workers to be supervised and protected.

(2) The content and application of the operating rules of the railroad pertaining to the establishment of working limits.

(3) The content and application of the rules of the railroad pertaining to the establishment or train approach warning.

(4) The relevant physical characteristics of the territory of the railroad upon which the roadway worker is qualified.

(b) Initial and periodic qualification of a roadway worker to provide on track safety for groups shall be evidenced by a recorded examination.

§ 214.353 Training and qualification in on-track safety for operators of roadway maintenance machines.

(a) The training and qualification of roadway workers who operate roadway maintenance machines shall include, as a minimum:

(1) Procedures to prevent a person from being struck by the machine when the machine is in motion or operation.

(2) Procedures to prevent any part of the machine from being struck by a train or other equipment on another track.

(3) Procedures to provide for stopping the machine short of other machines or obstructions on the track.

(4) Methods to determine safe operating procedures for each machine that the operator is expected to operate.

(b) Initial and periodic qualification of a roadway worker to operate roadway maintenance machines shall be evidenced by demonstrated proficiency.

Issued this 11th Day of March, 1996.

Jolene M. Molitoris,

Administrator. Federal Railroad Administration

[FR Doc. 96–6175 Filed 3–12–96; 8:45 am]

BILLING CODE 4910–06–P

Federal Highway Administration

49 CFR Parts 382, 383, 390, and 391

[FHWA Docket No. MC–96–6]

RIN 2125–AD66

Safety Performance History of New Drivers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA proposes to amend its regulations to specify minimum safety information that new and prospective employers must seek from former employers during the investigation of a driver's employment record. This notice of proposed rulemaking (NPRM) also proposes to increase the period of time for which carriers must record accident information in the accident register from one to three years. This proposal is mandated by section 114 of the Hazardous Materials Transportation Authorization Act of 1994 (HazMat Act). The proposed rules would ensure that employers would be cognizant of critical information concerning a driver's prior safety performance, while also affording the driver the opportunity to review and comment on that information.

DATES: Comments must be received on or before May 13, 1996.

ADDRESSES: All signed, written comments should refer to the docket number that appears at the beginning of this document and must be submitted to the Docket Clerk, Room 4232, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or envelope.

FOR FURTHER INFORMATION CONTACT: Ms. Valerie Height, Office of Motor Carrier Research and Standards, (202) 366–

1790, or Ms. Grace Reidy, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The FHWA is initiating this rulemaking in response to section 114 of the HazMat Act, Public Law 103–311, August 26, 1994, 108 Stat. 1677. Section 114 directs the FHWA to amend its regulations to require a motor carrier to request from previous employers specific safety information when investigating a driver's employment record pursuant to 49 CFR 391.23. The former employers would be required to respond to such requests within 30 days. The driver would be afforded an opportunity to review and comment on any information obtained from a former employer.

Currently, § 391.23(a)(2) of title 49 of the Code of Federal Regulations (CFR) requires motor carriers to make ''an investigation of the driver's employment record during the preceding three years,'' without specifying the type of information to be sought. The current regulation does not require a former employer to respond to the new and prospective employer's inquiry. For this reason, former employers may refuse to respond to such requests, and new and prospective employers are, therefore, unable to obtain important safety information about the driver.

The FHWA proposes to amend 49 CFR parts 382, 383, 390, and 391 to incorporate the changes mandated by the HazMat Act. Section 391.23 would be amended to require a motor carrier to obtain, for the preceding three-year period, information about a driver's accident record, hours-of- service violations resulting in an out-of-service order, violations of the prohibitions in subpart B of part 382, and failure to undertake or complete a rehabilitation program recommended by a substance abuse professional (SAP) under § 382.605. Former employers would be required to respond within 30 days to such requests. Drivers would be afforded an opportunity to review and comment on this information. Conforming changes would be made to §§ 383.35(f) and 391.21(d) to reflect the driver applicant's right to review and comment on information obtained from previous employers. To facilitate information exchange, § 390.15 would be amended to expand the time period for which carriers must record and retain accident information in an accident register from one to three years and require that the information in the accident register be provided to a subsequent employer in response to a request made during an employment investigation.

Part 382 would also be amended to incorporate the drug and alcohol provisions of section 114 of the HazMat Act. Consistent with § 391.23(c), § 382.413 would be amended to require employers to investigate whether a driver failed to undertake or complete rehabilitation or violated the prohibitions in subpart B of part 382. Employers subject to part 382 would also be required to obtain information concerning whether a driver violated the drug and alcohol rules of other DOT agencies as well as the prohibitions in subpart B of part 382. Other conforming changes are proposed for part 382 that do not affect § 391.23(c) and are discussed in greater detail under the section entitled ''Conforming Changes to Part 382.''

Applicability

Motor carriers subject to part 391 would be required to investigate the specific safety information proposed for § 391.23(c). They would be required to obtain information relative to a driver's accident experience and hours-of-service violations from all of the driver's motor carrier employers during the preceding three years. These motor carriers would also be required to request certain drug and alcohol information from employers that employed the driver to operate a commercial motor vehicle (CMV) requiring a commercial driver's license (CDL) under part 383 concerning events that occurred during the preceding three years. The source of the § 391.23(c) drug and alcohol information has been limited to motor carriers because, under this part, the FHWA only has authority to require a response from these employers. New and prospective employers would only be required to investigate the drug and alcohol information for drivers who operated a CMV requiring a CDL within the preceding three years because only these drivers are subject to the part 382 drug and alcohol testing program.

Under § 391.23, motor carriers may request general employment information from any employer who hired the driver within the preceding three years. The FHWA proposes to require that new and prospective employers request the safety information required under section 114 of the HazMat Act only of previous employers that are motor carriers. Although section 114 states that the requests for the safety information must be made to ''former employers,'' only motor carriers and persons who operate CMVs must comply with the requirements of 49 CFR Part 391. Thus, the proposed inquiry requirements of 49 CFR 391.23 would only apply to former employers that are (or were) motor carriers.

Section 114(a)(2) of the HazMat Act requires former employers to respond within 30 days to requests for safety information on a driver. Section 391.23(c) requires the motor carrier to make this investigation within 30 days of hiring the driver. To avoid prolonging the employment investigation process to 60 days (up to 30 days for the motor carrier to initiate the investigation plus up to 30 days for former employers to respond), the FHWA proposes to clarify § 391.23(c) to require a motor carrier to commence the investigation as soon as possible, but not later than 30 days after hiring the driver. Section 391.23(c)(2) is added to require former employers to provide the information in § 391.23(c) within 30 days of receiving the request. The former employer's 30-day response period commences from the postmarked date on a mailed request, the date of transmission on a facsimile request, or the date that the former employer was contacted for a personal or telephone interview. The 30-day period refers to calendar days and includes weekends and holidays. The 30-day response period concludes as of the date of postmark on a mailed response, date of transmission on a facsimile response, or the date that the former employer provides the information in a personal or telephone interview.

Under these proposed regulations, the driver would be given a reasonable opportunity to review and comment on any information obtained during the overall employment investigation. The motor carrier would be required to notify the driver applicant of such right when applying for employment.

The items of information proposed in § 391.23(c) are minimum safety indicators that would be investigated under § 391.23, in addition to general employment information. The specified information should not necessarily be regarded as an exclusive list of the information that would be obtained during the driver's employment record investigation. Employers would be allowed to continue to investigate, generally, an applicant's employment record. Employers who are subject to part 382 would also be required to obtain the information required by that part (See the section entitled

''Conforming Amendments to Part 382'').

Specific Minimum Safety Information To Be Sought When Investigating the Driver's Employment Record Under § 391.23

Under § 391.23, motor carriers would be required to request the following safety information from a motor carrier employer who, within the preceding three years, hired the driver to operate a CMV:

1. Accidents (as defined in § 390.5) in which the driver was involved during the past three years; and

2. Hours-of-service violations that resulted in an out-of-service order being issued to the driver during the past three years.

Motor carriers would also be required to request information regarding the following safety violations from an employer who, within the preceding three years, hired the driver to operate a CMV requiring a CDL under part 383:

3. Failure of the driver to undertake or complete a rehabilitation program prescribed by a substance abuse professional pursuant to § 382.605 during the past three years; and

4. Violations of the prohibitions in subpart B of part 382 during the past three years.

A discussion of each of the minimum safety indicators follows.

Accidents

The FHWA proposes to require new and prospective employers to investigate accidents occurring within the preceding three years involving a driver applicant. An accident is defined in § 390.5 as follows:

[A]n occurrence involving a commercial motor vehicle operating on a public road in interstate or intrastate commerce which results in—

(i) A fatality;

(ii) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(iii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

Section 390.5 provides that the definition of an accident does not include the following:

(i) An occurrence involving only boarding and alighting from a stationary motor vehicle; or

(ii) An occurrence involving only the loading or unloading of cargo; or

(iii) An occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle (as defined in 49 CFR 571.3 of this title) by a motor carrier and is not transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be marked or placarded in accordance with 49 CFR 177.823 of this title.

''Disabling damage'' is defined in § 390.5 as ''damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.'' This includes ''damage to motor vehicles that could have been driven but would have been further damaged if so driven.'' However, § 390.5 provides that disabling damage does not include—

(i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts.

(ii) Tire disablement without other damage even if no spare tire is available.

(iii) Headlamp or taillight damage.

(iv) Damage to turn signals, horn, or windshield wipers which makes them inoperative.

The FHWA proposes that only accidents, as defined in § 390.5, be investigated instead of ''any motor vehicle accidents'' as stated in the HazMat Act for the following reasons. First, the FMCSR's definition of ''accident'' contained in 49 CFR 390.5 is not as all inclusive as ''any motor vehicle accident''; and the FMCSR's definitions apply to part 391. Section 390.15 already requires motor carriers to retain a record of ''accidents'' as defined in § 390.5. Broadening the term ''accident'' to include occurrences beyond those described in § 390.5 would make its definition inconsistent with the National Governors' Association (NGA) definition and would, therefore, skew the data contained in the SAFETYNET System. Such action could also significantly increase the paperwork burden placed upon the motor carrier industry. The FHWA published a final rule on February 2, 1993, in the Federal Register (58 FR 6729) which incorporated into the FMCSRs the accident definition recommended in the NGA study entitled, ''Truck and Bus Accidents: Getting the Facts'' (1990). In that final rule, the FHWA eliminated the requirements that motor carriers submit accident reports to the FHWA and notify the agency telephonically of fatal accidents, adopted a new accident reporting system (SAFETYNET Accident Module) which collects information from police accident reports and incorporates the NGA accident reporting data elements, and required motor carriers to maintain a register of accidents for a period of one year after the accident occurs. Each of the actions put into effect by the February 2, 1993, final rule is based upon the uniform definition of the term ''accident.'' Therefore, the FHWA proposes to restrict the accidents investigated under § 391.23(c)(1)(i) to those accidents defined in § 390.5 so that (1) the relationship between the definition of an accident and the actions accomplished by the February 2, 1993, final rule is maintained and (2) motor carrier employers may comply with the HazMat Act requirements without undue burden or confusion.

To facilitate implementation of the accident information requirements, the FHWA also proposes to broaden the use of the accident register. Currently, the accident register may be used to assist investigations and special studies conducted by representatives or special agents of the FHWA. The FHWA proposes to encourage motor carriers also to use it when responding to a new or prospective employer's request for information about a driver applicant's accident record.

The FHWA proposes to extend the period of time that the register must be retained from one to three years. Extending the retention period to three years would enable a motor carrier employing a driver for three or more years to provide an accident history to a subsequent employer for the entire period required by the proposed rule.

This proposal to require inquiries of former employers would not set aside the motor carrier's responsibility to investigate a driver's driving record under § 391.23(a)(1). Motor carriers are still required to inquire about a driver's driving record from the appropriate State agency in accordance with § 391.23(a)(1). Accident information obtained from previous employers would supplement any information from State agencies and, therefore, provide a more comprehensive safety profile of the driver.

Hours-of-Service Violations Resulting in an Out-of-Service Order

The FHWA considers a driver's hours-of-service violations to be a major safety indicator. The FHWA would require this information to be included in the employment investigation under the authority in section 114(b)(4) of the HazMat Act that authorizes ''any other matters determined by the Secretary of Transportation to be appropriate and useful for determining the driver's safety performance,'' to be a part of the investigation. Drivers who violate the hours-of-service rules often have insufficient rest to safely operate a CMV. The fatigue and loss of alertness

resulting from insufficient rest may place them and other highway users at higher risk. This information, therefore, will help new and prospective employers identify potentially unsafe drivers.

Failure to Undertake or Complete Drug or Alcohol Rehabilitation

The FHWA proposes to amend § 391.23 so that motor carriers would be required to investigate whether, within the preceding three years, a driver failed to undertake or complete a rehabilitation program pursuant to 49 U.S.C. 31306 after having been found to have used drugs or alcohol in violation of law or Federal regulation. (Section 114(b)(2) of the HazMat Act incorrectly references 49 U.S.C. 31302 in addressing this issue; the drafters of the Act clearly intended to reference the rehabilitation program under section 31306. This intention is evidenced by earlier versions of Senate Bill 1640 that relate the rehabilitation program to section 12020 of the Commercial Motor Vehicle Safety Act of 1986.)

Under 49 U.S.C. 31306, the Secretary of Transportation is directed to ''prescribe regulations establishing requirements for rehabilitation programs that provide for the identification and opportunity for treatment of operators of commercial motor vehicles who are found to have used alcohol or a controlled substance in violation of law or a Government regulation.'' The regulations implementing the rehabilitation requirements of section 31306 appear in 49 CFR 382.605 and apply generally to drivers of CMVs with a gross vehicle weight rating (GVWR) in excess of 26,000 lbs., vehicles transporting hazardous materials which are required to be placarded, or vehicles designed to transport more than 15 passengers, including the driver. Part 382 contains alcohol and drug rules pertaining to motor carriers and provides procedures and regulations for referring drivers who violate its prohibitions to a SAP, to determine what, if any, rehabilitation programs are needed to resolve problems associated with alcohol misuse and substance abuse. Section 382.501(b) also prohibits an employer from using a driver who was found to have illegally used drugs or alcohol in a safety-sensitive function until that driver has received the recommended treatment.

The amendments proposed under § 391.23(c)(1)(iii) and (iv) would better enable a motor carrier that operates CMVs with a GVWR between 10,000 and 26,000 lbs. in interstate commerce to comply with § 382.501(b). Although such an employer is not subject to the entire part 382, he or she may not use a driver in safety-sensitive functions, including driving a CMV, if that driver has been found to have illegally used drugs or alcohol until that driver has received the recommended treatment. Section 391.23(c)(1)(iv) would require a motor carrier to investigate whether a driver had illegally used drugs or alcohol within the previous three years. Section 391.23(c)(1)(iii) would require a motor carrier to determine whether a driver had failed to undertake or complete recommended treatment after having been found to have illegally used drugs or alcohol. This information would assist the motor carrier that is not subject to part 382 in determining whether a driver was qualified to operate a CMV.

Determining whether a driver completed rehabilitation may not always be a straightforward process. Section 382.605(b) requires employers to refer CDL holders violating the prohibitions of part 382 to a SAP. The SAP must determine what, if any, assistance the driver needs in resolving problems associated with controlled substance use and alcohol misuse. If a SAP refers a driver to a rehabilitation program, the employer may not use that driver in a safety-sensitive function until assured that the driver has complied with the treatment recommended by the SAP. The employer is required to maintain records pertaining to a SAP's determination concerning a driver's need for assistance and records concerning a driver's compliance with the SAP's recommendations. Even if a SAP does not refer a driver to a rehabilitation program, the employer is still required to maintain a record of the SAP's evaluation.

However, if a driver quits working for the employer before seeing a SAP or undertaking or completing rehabilitation, that employer is not required to ensure that the driver completes the SAP reference and evaluation process. An employer is only prohibited from using the driver in a safety-sensitive function until the driver complies with a SAP's recommendations. If the driver terminates employment before the SAP evaluation or rehabilitation, the employer may not know if rehabilitation was undertaken, completed or even recommended. A new or prospective employer would also have no evidence that the driver complied with the SAP's recommendations.

Therefore, to comply with this requirement, a new employer would have to investigate whether (1) the driver was ever referred to a SAP, (2) the SAP referred the driver to a rehabilitation program, and (3) a SAP's evaluation certified the driver was qualified to return to duty.

Violations of the Prohibitions in Subpart B of Part 382

Section 114(b)(3) of the HazMat Act mandates the investigation of ''any use by the driver, during the preceding 3 years, in violation of law or Federal regulation, of alcohol or a controlled substance subsequent to completing such a rehabilitation program.'' This mandate requires that a motor carrier determine whether a driver continued to abuse alcohol and/or a controlled substance subsequent to treatment for such abuse. Section 114(b)(4) authorizes the Secretary to include in the required information other matters that are appropriate and useful to determine a driver's safety record. In conjunction with section 114(b)(3), the FHWA proposes to execute the authority granted in section 114(b)(4) to clarify and enhance the substance abuse safety information requirement.

Under § 391.23, the FHWA proposes to require that only violations of the prohibitions listed in 49 CFR Part 382, subpart B, be required as reportable violations of ''law or Federal regulation, of alcohol or a controlled substance,'' pursuant to section 114(b)(3). It is impractical for the FHWA to enforce a rule requiring a motor carrier to investigate all illegal uses of drugs and alcohol. The statutory language, ''in violation of law or Federal regulation,'' is broad and includes drug and alcohol use in violation of State, Federal, or local law or Federal regulation. A previous employer may have knowledge of whether a driver used drugs or alcohol ''in violation of law or Federal regulation,'' but, under this part, the FHWA could only require employers subject to its regulations to provide it. Most employers may not willingly respond to such requests for fear of a lawsuit by the driver.

It is more feasible to clarify the term, ''in violation of law or Federal regulation,'' to mean violations of the prohibitions in subpart B of part 382. Subpart B contains drug and alcohol regulations that pertain to CMV operators. Transmission of the required information will be aided by the fact that employers subject to part 383 already maintain a record of a driver's violations under part 382.

The FHWA also proposes to utilize the section 114(b)(4) authority to require that all part 382, subpart B, violations occurring within the previous three years be transmitted to the inquiring motor carrier from the previous

employer. This requirement expands the provision that required violations occurring subsequent to rehabilitation be transmitted to the motor carrier requesting the information. The FHWA believes that a three-year period, as specified in section 114(b) for other required information, is in accordance with the intent of the HazMat Act to grant new and prospective employers sufficient knowledge about safety histories of drivers.

Extending the reporting period to three years is also efficient because it may be difficult to determine when rehabilitation was completed. Many times when a driver is found to have illegally used drugs or alcohol, an employer provides the driver a list of SAPs, terminates the driver's employment, and makes a record of the referral. In this case, the employer would not know whether rehabilitation was recommended or completed, nor is he or she required to know. Thus, it could be very difficult, if not impossible, for a new or prospective employer to ascertain when rehabilitation was recommended or completed.

Removing the ''after rehabilitation'' limitation would satisfy the intent of the HazMat Act within the authority granted FHWA and enable motor carriers to more easily implement the requirement. A new or prospective employer would only be required to know whether, during the past three years, the driver operated a CMV requiring a CDL under part 383, to determine whether this information must be obtained. If so, the motor carrier would be required to seek the information only from employers that hired the driver to operate a CMV requiring a CDL under part 383 during the past three years.

The Driver's Written Consent for Drug or Alcohol Information

Part 382 requires that drug and alcohol information pertaining to a driver be released pursuant to the terms of the driver's written consent. For this reason, the FHWA proposes to add § 391.23(e) to similarly require employers to request the drug and alcohol information pursuant to the driver's written consent. Thus, employers could avoid processing delays caused when the request is not accompanied by the driver's written authorization.

Driver's Right to Review and Comment on Information

The motor carrier must allow the driver a reasonable opportunity to review and comment on any safety information obtained. This proposal does not define ''a reasonable opportunity'' but proposes to leave this to the motor carrier's discretion. We invite public comment on whether it is necessary for the FHWA to define what constitutes ''reasonable opportunity'' and include a specific time frame for compliance.

The driver's right to review and comment on the information is clearly established by section 114(a)(3) of the HazMat Act. The FHWA believes that the motor carrier should inform the driver of this right when the application for employment is completed. The driver's comments, if any, could be made orally or in writing. However, the motor carrier is not responsible for correcting any information obtained. The driver should contact the former employer to settle disputes over allegedly incorrect information.

Conforming Amendments to Part 382

Because much of the information mandated by section 114 of the HazMat Act is similar to information currently shared by employers under part 382, conforming changes are being proposed for §§ 382.405 and 382.413 to ensure consistency with the HazMat Act. Accordingly, § 382.413 would be amended to require an employer to seek information from former employers regarding (1) a driver's failure, during the preceding three years, to undertake or complete a rehabilitation program after being found to have violated alcohol or controlled substances laws or regulations, and (2) any use by the driver, during the preceding three years, of alcohol or a controlled substance in violation of 49 CFR Part 382, subpart B or the rules of other DOT agencies. The congressional mandate in the HazMat Act requires that this information be released by former employers within 30 days, and that the driver to whom the information applies would have a reasonable opportunity to review and comment on the information.

Section 382.413, as currently written, requires much of the same information to be shared between new and prospective employers and former employers as proposed in this action. Section 382.413 requires the sharing of information on certain violations of part 382: positive drug test results, alcohol results of 0.04 alcohol concentration or greater, and refusals to be tested. Section 114(b)(3) of the HazMat Act is both broader and narrower than part 382's requirements since section 114(b)(3) mandates the sharing of information on all prohibited uses of drugs and alcohol by drivers, but limits the inquiry to those violations that occurred after completing rehabilitation. Section 382.413(a) would be revised to include all violations of subpart B by a driver, not just testing violations. In addition, based on the authority granted by section 114(b)(4) of the HazMat Act, which empowers the Secretary to include other matters ''appropriate and useful for determining a driver's safety performance'', such violations would continue to include, but not be limited to, those occurring after rehabilitation. The FHWA believes that all violations of the prohibitions in part 382 are important indicators of the driver's safety performance.

The information required by section 114(b)(2) of the HazMat Act relative to a driver's failure to complete rehabilitation (already required implicitly by § 382.413(g)) which must be obtained before a violator may be permitted to return to driving would be listed as a separate item in § 382.413(a)(1)(ii).

It should be noted that the records required to be obtained under § 382.413 would be limited only to those records generated under part 382 and the alcohol and drug testing rules of other DOT agencies after January 1, 1995. Interstate motor carriers must maintain their records, generated under part 391, for the periods of time specified in § 382.401. Because of the significant difference between the testing programs in parts 382 and 391, the FHWA would not require new or prospective employers to obtain the information maintained by former employers prior to January 1, 1995, for large employers, and January 1, 1996, for small employers. See § 382.413(i).

Other amendments are necessary to conform 49 CFR part 382 to the HazMat Act. First, § 382.413(a)(1)(i) would extend the period of shared information from two to three years. Second, § 382.413(h) would afford drivers a reasonable opportunity to review and comment on any information obtained by new or prospective employers under § 382.413(a)(1). Third, § 382.405(f) would allow former employers 30 days to respond to requests for information. The amendment to § 382.405(f) recognizes that a great majority of requests for testing information from former employers will occur pursuant to § 382.413. There is no reason for two standards for response periods. The 30-day response period provided in the HazMat Act for information requests to former employers would be made a general standard in § 382.405(f), thus applying to all requests for drug and alcohol testing information from employers. Of course, employers may only disclose a driver's drug and alcohol

records under part 382 pursuant to the driver's written consent.

The current 14-day limit for new employers to obtain the information after first using a driver, when not feasible to do so before using the driver, would be extended to 30 days. Employers would be required to request the information from former employers as soon as the employer expects to use or hire the driver to drive or perform other safety-sensitive functions. The 30-day period should be sufficient to accommodate information requests and responses made by mail. Although there is no requirement that the inquiries and responses be processed by mail, the prudent employer may wish to employ the faster and confidential communication methods authorized in § 382.413(e) to meet the 30-day time limit requirement.

Part 382 would continue to require, if feasible, the employer to obtain the information prior to the first performance of safety-sensitive functions by a driver. If obtaining the information prior to the driver's first performance of safety-sensitive functions for the employer is not feasible, the information would have to be obtained as soon as possible, but no more than 30 days after first using the driver to perform safety-sensitive functions.

Beyond incorporating the HazMat Act requirements into part 382, the source of the violations enumerated in § 382.413 would also be amended to include all DOT agencies'' alcohol and controlled substances regulations. The FHWA believes that some drivers may apply for positions that require driving CMVs after they have violated the alcohol or drug use prohibitions of another DOT agency. The FHWA has, therefore, included a requirement that employers request information from all past employers for which a driver worked in a position covered by the alcohol and/or drug prohibitions and testing requirements of another DOT agency. This would ensure that persons applying for positions that require operating a CMV would have all of their relevant records of violations investigated. It would also ensure that persons who test positive are evaluated by a SAP, and, before returning to perform safety-sensitive functions, complete a recommended rehabilitation program.

Section 382.413(a)(2) was incorporated into the FMCSRs by a final rule published in the Federal Register on March 8, 1996, (61 FR 9546). That action allows previous employers to include information obtained from other previous employers when responding to requests for a driver's drug and alcohol information under § 382.413(a)(1), as long as that information falls within the previous two- year period. Because the March 8, 1996, final rule was a technical amendment, the FHWA was unable to mandate the requirements now proposed in § 382.413(a)(2). Such an action would have made a substantive change to the regulations requiring public notice before becoming a final rule. This notice proposes to mandate the requirements proposed in § 382.413(a)(2) in accordance with the intent of section 114(b) of the HazMat Act by changing the word ''may'' to ''shall.''

New and prospective employers should ensure that the driver's written consent authorizes former employers to disclose all prohibitions listed under § 382.413(a)(1), that occurred within the previous three years, of which the former employer has knowledge. Otherwise, a former employer may be prohibited by § 382.405(f) from passing along to the inquiring employer any § 382.413(a)(1) information that was obtained from another previous employer. Section 382.405(f) states that records under part 382 may only be released to a subsequent employer upon receipt of written authorization from a driver. Disclosure of the part 382 records by the subsequent employer is also permitted only as expressly authorized by the terms of the driver's signed authorization. If the driver's authorization had prohibited the subsequent employer from disclosing the information, sharing that information with the inquiring employer would be in violation of § 382.405(f).

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date. Interested persons should continue to examine the docket for new material. Nevertheless, the FHWA may issue a final rule on this matter at any time after the close of the comment period.

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

The FHWA has determined that this document does not constitute a significant regulatory action for the purposes of Executive Order 12866 or a significant regulation under the regulatory policies and procedures of the DOT. These proposed changes to the Federal Motor Carrier Safety Regulations would not cause an annual impact on the economy of over $1 million, and they would not adversely affect a sector of the economy in a material way. These changes would not create an inconsistency or otherwise interfere with another agency's actions, nor do they raise novel legal or policy issues. These changes merely implement a recently enacted legislative mandate directing the FHWA to amend its regulations to require a motor carrier to request from previous employers specific safety information when investigating a driver's employment record pursuant to 49 CFR 391.23. Motor carriers are already required by section 391.23(a)(2) to make ''an investigation of the driver's employment record during the preceding three years.'' These proposed changes merely specify the types of information to be sought, increase the period of time for which carriers must record accident information from one to three years, direct former employers to respond to information requests within thirty days, and require that drivers be afforded an opportunity to review and comment on any information obtained from a former employer. Thus, in light of this analysis, especially the finding that the economic impact of this action is likely to be minimal, the FHWA has determined that a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. It is anticipated that the economic impact of this rulemaking on all employers, regardless of size, will be minimal. This NPRM proposes to set forth minimum safety information that new and prospective employers would request when investigating a driver applicant's employment record. Employers are already required to maintain this safety information. These amendments would clarify existing requirements and would impose only a minor additional requirement on employers to record and retain accident information for three years instead of one. Accordingly, the

FHWA certifies that under the criteria of the Regulatory Flexibility Act this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that these proposed changes would not preempt any State law or State regulation, and no additional costs or burdens would be imposed on the States. In addition, these changes would have no effect on the States' ability to discharge traditional State governmental functions. Motor carrier safety is a matter of national concern to which Congress has responded by enacting section 114 of the HazMat Act which directs the FHWA to amend its regulations to specify the safety information a motor carrier must request from a driver's former employers. Thus, in light of the importance to the nation as a whole of ensuring that motor carrier vehicles are operated by safety conscious drivers, this Federal action regarding the safety performance history of drivers is justified and does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action would impact existing collection of information requirements for purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501—3520). It would affect the period of retention for an existing accident record keeping requirement, extend the period of inquiry relating to a driver's alcohol and controlled substance history, and require additional information relating to a driver's employment investigation under § 391.23 to be retained in the driver's qualification file. Because of these changes, existing Office of Management and Budget (OMB) approvals are being revised.

Motor carriers are required under 49 CFR 390.15 to maintain and retain an accident register for a period of one year. That requirement was approved by the OMB under control number 2125–0526. This NPRM proposes to extend the period for which the accident register must be retained from one to three years under the previous OMB authority. Extending the retention period would enable motor carriers to satisfy, with an existing resource, the accident reporting requirements of section 114(b) of the HazMat Act for the full three-year period. The information collection requirements imposed by this proposed amendment have been submitted to the OMB under OMB Control Number 2125–0526 for approval under the Paperwork Reduction Act.

Section 391.23(c) proposes to require motor carriers to request from previous employers information about a driver's accidents, illegal drug and alcohol use, failure to complete recommended treatment for such abuse, and certain hours of service violations. Currently, motor carriers are only required to request general employment information from the previous employer. The amendments proposed in § 391.23(c) are mandated by Congress and would ensure that employers are cognizant of critical information concerning a driver's safety performance. The information collection requirements imposed by these proposed amendments have been submitted to the OMB under OMB Control Number 2125–0065 for approval under the Paperwork Reduction Act.

Similarly, employers of both interstate and intrastate drivers that must hold commercial drivers licenses are required, under 49 CFR 382.413, to seek testing information from previous employers for only the preceding two years. OMB approval for that requirement was granted under control number 2125–0543. This NPRM would require all motor carriers to request three years of drug and alcohol testing information on new drivers who operate in interstate commerce. Therefore, employers subject to 49 CFR 382.413 would be required to seek drug and alcohol information about a driver for the previous three years instead of two. Additionally, not just testing information would be requested from former employers. Employers would be required to obtain information about violations of the prohibitions of subpart B of part 382 or the drug and alcohol rules of another DOT agency or a driver's failure to undertake or complete recommended treatment. These conforming amendments are mandated by section 114 of the HazMat Act. The information collection requirements imposed by these proposed amendments have been submitted to the OMB under OMB Control Number 2125–0543 for approval under the Paperwork Reduction Act. The FHWA requests public comment on these new and revised paperwork collection requirements.

National Environmental Policy Act

This agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that it would not have any effect on the quality of the environment.

Regulation Identification Number

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

List of Subjects in 49 CFR 382, 383, 390, and 391

Alcohol concentration, Alcohol testing, Commercial motor vehicles, Controlled substances testing, Drivers, Driver qualifications, Highway safety, Highways and roads, Hours of Service, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements, Safety, Transportation.

Issued on: March 6, 1996.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 49, CFR, subtitle B, chapter III, parts 382, 383, 390, and 391 as set forth below:

PART 382—[AMENDED]

1. The authority citation for 49 CFR part 382 is revised to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31301 *et seq.*, 31502; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; and 49 CFR 1.48.

2. In § 382.405, paragraph (f) is revised to read as follows:

§ 382.405 Access to facilities and records.

* * * * *

(f) Records shall be made available, within 30 days, to a subsequent employer upon receipt of written authorization from a driver. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the driver's signed authorization.

* * * * *

3. Section 382.413 is revised to read as follows:

§ 382.413 Inquiries for alcohol and controlled substances information from previous employers.

(a) (1) An employer, including a prospective employer, shall, pursuant to the driver's written authorization, inquire about the following information relating to the driver from the driver's previous employers:

(i) Violations of the prohibitions contained in subpart B of this part, or the alcohol or controlled substances rules of other DOT agencies, during the past three years; and

(ii) Failure to undertake or complete a rehabilitation program prescribed by a substance abuse professional pursuant to § 382.605, or the alcohol or controlled substances rules of another DOT agency, during the past three years.

(2) The information obtained from a previous employer must contain any alcohol and drug information the previous employer obtained from other previous employers under paragraph (a)(1) of this section.

(b) If feasible, the information in paragraph (a) of this section must be obtained and reviewed by the employer prior to the first time the driver performs safety-sensitive functions for the employer. If not feasible, the information must be obtained and reviewed as soon as possible, but no later than 30 calendar days after the first time a driver performs safety-sensitive functions for the employer. An employer shall not permit a driver to perform safety-sensitive functions after 30 days without having made a good faith effort to obtain the information as soon as possible. If a driver hired or used by the employer ceases performing safety-sensitive functions for the employer before expiration of the 30-day period or before the employer has obtained the information in paragraph (a) of this section, the employer must still make a good faith effort to obtain the information.

(c) An employer shall maintain a written, confidential record of the information obtained under paragraph (a) or (f) of this section. If, after making a good faith effort, an employer is unable to obtain the information from a previous employer, a record shall be made of the efforts to obtain the information and retained in the driver's qualification file.

(d) The new/prospective employer must provide to each of the driver's previous employers the driver's specific, written authorization for release of the information in paragraph (a) of this section.

(e) The release of any information under this section may take the form of personal interviews, telephone interviews, letters, or any other method of transmitting information that ensures confidentiality. The written authorization for release of this information may be transmitted to the previous employer by any method that ensures confidentiality.

(f) The information in paragraph (a) of this section may be provided directly to the prospective employer by the driver, provided the employer assures itself that the information is true and accurate.

(g) An employer may not use a driver to perform safety-sensitive functions if the employer obtains information on a violation of the prohibitions in subpart B of this part by the driver, without obtaining information on subsequent compliance with the referral and rehabilitation requirements of § 382.605 of this part.

(h) An employer shall afford the driver a reasonable opportunity to review and comment on any information obtained by the employer under paragraph (a) of this section. The employer shall notify the driver of this provision at the time of application for employment.

(i) Employers need not obtain information under paragraph (a) of this section generated by previous employers prior to the starting dates in § 382.115 of this part.

PART 383—[AMENDED]

4. The authority citation for 49 CFR part 383 is revised to read as follows:

Authority: 49 U.S.C. 3102, 31101 *et seq.;* and 31136; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; and 49 CFR 1.48.

5. In § 383.35, paragraph (f) is revised to read as follows:

§ 383.35 Notification of previous employment.

* * * * *

(f) Before an application is submitted the employer shall inform the applicant that the information he/she provides in accordance with paragraph (c) of this section may be used, and the applicant's previous employers will be contacted, for the purpose of investigating the applicant's work history. The employer shall also inform the applicant that he/she will be provided an opportunity to review and comment on any information obtained from previous employers.

PART 390—[AMENDED]

6. The authority citation for 49 CFR part 390 is revised to read as follows:

Authority: 49 U.S.C. 5901–5907, 31132, 31133, 31136, 31502, and 31504; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; and 49 CFR 1.48.

7. Section 390.15 is revised to read as follows:

§ 390.15 Assistance in investigations and special studies.

(a) A motor carrier shall make all records and information pertaining to an accident available to an authorized representative or special agent of the Federal Highway Administration upon request or as part of any inquiry within such time as the request or inquiry may specify. A motor carrier shall give an authorized representative of the Federal Highway Administration all reasonable assistance in the investigation of any accident including providing a full, true and correct response to any question of the inquiry.

(b) Motor carriers shall maintain for a period of three years after an accident occurs, an accident register containing at least the following information:

(1) A list of accidents containing for each accident:

(i) Date of accident,

(ii) City or town in which or most near where the accident occurred and the State in which the accident occurred,

(iii) Driver name,

(iv) Number of injuries,

(v) Number of fatalities, and

(vi) Whether hazardous materials, other than fuel spilled from the fuel tanks of motor vehicle(s) involved in the accident, were released.

(2) Copies of all accident reports required by State or other governmental entities or insurers.

(c) Motor carriers shall make available, within 30 days after receiving a request for information about a driver's accident record from a new or prospective employer, all records and information within the accident register that pertain to that driver's accident record.

PART 391—[AMENDED]

8. The authority citation for 49 CFR part 391 is revised to read as follows:

Authority: 49 U.S.C. 504, 31133, 31136, and 31502; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; and 49 CFR 1.48.

9. In § 391.21, paragraph (d) is revised to read as follows:

§ 391.21 Application for employment.

* * * * *

(d) Before an application is submitted, the motor carrier shall inform the applicant that the information he/she provides in accordance with paragraph (b)(10) of this section may be used, and the applicant's prior employers will be

contacted for the purpose of investigating the applicant's background as required by § 391.23. The employer shall also inform the applicant that he/she will be provided an opportunity to review and comment on any information obtained from previous employers.

10. In § 391.23, paragraph (c) is revised and new paragraphs (d) and (e) are added to read as follows:

§ 391.23 Investigation and inquiries.

* * * * *

(c) The investigation of the driver's employment record required by paragraph (a)(2) of this section must commence as soon as possible, but no later than 30 days after the date the driver's employment begins. The investigation shall consist of personal interviews, telephone interviews, letters of inquiry, or any other method of obtaining information that the motor carrier deems appropriate. Each motor carrier must make a written record with respect to each previous employer that was contacted. The record must include the previous employer's name and address, the date the previous employer was contacted, and its comments with respect to the driver. The record shall be maintained in the driver's qualification file.

(1) The following information, as a minimum, must be obtained from all previous employers that employed the driver to operate a commercial motor vehicle:

(i) Any accidents, as defined by § 390.5 of this subchapter, in which the driver was involved during the preceding three years;

(ii) Any hours-of-service violations resulting in an out-of-service order being issued to the driver within the preceding three years;

(iii) Any failure of the driver, during the preceding three years, to undertake or complete a rehabilitation program pursuant to § 382.605, after being found to have used, in violation of law or Federal regulation, alcohol or a controlled substance;

(iv) Any use by the driver, during the preceding three years, in violation of law or Federal regulation, of alcohol or a controlled substance subsequent to completing such a rehabilitation program.

(2) Previous employers shall respond to requests for the information in paragraph (c)(1) of this section within 30 days after the request is received.

(d) The motor carrier shall afford the driver a reasonable opportunity to review and comment on any information obtained during the employment investigation, including the information described in paragraph (c)(1) of this section. The motor carrier shall notify the driver of this right at the time of application for employment.

(e) The information required under paragraphs (c)(1)(iii) and (iv) of this section must be obtained pursuant to the driver's written authorization.

[FR Doc. 96–6130 Filed 3–13–96; 8:45 am]

BILLING CODE 4910–22–P

National Highway Traffic Safety Administration

49 CFR Part 571

Denial of Petition for Rulemaking; Federal Motor Vehicle Safety Standards

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

ACTION: Notice of denial of petition for rulemaking.

SUMMARY: This notice denies the petition by Darrin L. Johnson for the issuance of a mandatory order requiring that all motor vehicles be equipped with front stop lamps. NHTSA's analysis of the petition concludes that requiring front stop lamps on all motor vehicles does not further the cause of reducing the risk of motor vehicles related fatalities, injuries and accidents. The denial notice concludes that the likely consequence of implementing such a system will be higher risk behavior by motorists and pedestrians.

FOR FURTHER INFORMATION CONTACT: Kenneth O. Hardie, Safety Performance Standards, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Mr. Hardie's telephone number is (202) 366–6987.

SUPPLEMENTARY INFORMATION: By letter dated September 19, 1995, Darrin L. Johnson of North Hollywood, California petitioned the NHTSA to issue a rule that would mandate the equipping of all motor vehicles with front ''brake lights.'' The petitioner stated that front ''brake lights'' will save lives because it is necessary for other drivers and pedestrians to know the intended maneuvers of a vehicle, from the front of the vehicle as well as the rear. The petitioner stated that it is important to know from the front if an approaching driver intends to decrease his speed and/or is applying the brakes at certain crucial periods. The petitioner would require the front ''brake lights'' to be steady burning and red in color. The front ''brake lights'' would light simultaneously with the rear stop lamps, when the brake is depressed and/or applied. The petitioner estimates that the cost for the front ''brake light'' system to be as follows:

Production Cost—$35.00
Wholesale Cost—$70.00
Retail Price—$150.00

Analysis of Petition

The petition contains a number of scenarios that suggest that forward-facing stop signals will reduce the risk of fatalities, injuries and accidents by minimizing the amount of driver guesswork of when to maneuver a vehicle into traffic. The petitioner's rationale for mandating a rule requiring all motor vehicles to be equipped with front stop lamps is these lamps would communicate an approaching driver's intent to brake or decrease speed. Presumably, other drivers or pedestrians would have information on the intent of the approaching vehicle based upon whether the front stop lamps had been activated. The observing individual could then act accordingly or maneuver onto traffic.

The petitioner presents a number of scenarios to support a claim that front stop lamps will result in a reduction of accidents involving a vehicle that is attempting to enter traffic from a driveway, street, or entrance road of a freeway. The petitioner claims that a motorist would have additional safety information when attempting to enter traffic by monitoring the front stop lamps of an approaching vehicle. The petitioner claims that vehicles entering traffic would avoid a higher percentage of collisions with oncoming vehicles because the driver attempting to enter traffic would know whether the driver with the right-of-way was giving up the right-of-way, thus, allowing him/her to more safely enter traffic. The petitioner claims that this could be done by observing if the approaching vehicle's front stop lamps were illuminated, thus, indicating braking or stopping. The assumption of the petitioner appears to be that an illuminated front stop lamp means that the approaching driver has relinquished the right-of-way.

It is NHTSA's belief that forward-facing stop lamps might provide some useful information to drivers, but that a front stop signal might also produce ambiguity and could lead to dangerous driver or pedestrian action if it is not interpreted by the viewer in an appropriate manner. For example, a driver whose vehicle is not slowing down but who taps the brake pedal as a precaution when approaching an intersection could find a car pulling out dangerously close in front of him/her, because the other drivers assumed that the vehicle would be making a turn or

relinquishing the right-of-way. There are a number of scenarios that could be hypothesized which could cause false signals to be given to other drivers. Drivers would need to determine which signals are true and which are false. There is little time for such behavior during normal driving. The front stop lamp could encourage drivers to violate the right-of-way laws that exist in each state.

Consequently, NHTSA is concerned that illuminated front stop lamps could lure drivers who are attempting to enter traffic into high risk behavior. This is because the presence of an illuminated front stop lamp is not assurance that an approaching driver has relinquished the right-of-way to the merging or entering traffic. Making decisions regarding when to merge or enter traffic based upon the illumination of front stop lamps would be risky behavior. NHTSA does not believe that there will be a net positive benefit from a rule that requires front stop lamps on all motor vehicles.

In two scenarios involving a motor vehicle and a pedestrian the petitioner suggested that front stop lamps should be installed on all motor vehicles because they would provide additional information to a pedestrian who was preparing to cross the street. The petitioner claimed that the potential for disaster would be minimized or eliminated because the pedestrian would be able to determine if it were safe to enter the street based upon the illumination status of the front stop lamps. The agency has concluded that the same problem exists with pedestrians as with motorists evaluating whether to enter traffic based upon whether front stop lamps are illuminated. The pedestrian should never presume that drivers of vehicles will respect the right-of-way of pedestrians.

In accordance with CFR part 552, this completes the agency's review of the petition. The agency has concluded that front stop lamps do not have the promise of producing reductions in fatalities, injuries, or accidents. The agency believes that the likely consequence of requiring such a system will be higher risk behavior by motorists and pedestrians. The agency has concluded that there is no reasonable possibility that the amendment requested by the petitioner would be issued at the conclusion of a rulemaking proceeding. Accordingly, it denies the petition submitted by Darrin L. Johnson.

Authority: 49 U.S.C. 30103, 30111, 30162; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on March 11, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–6131 Filed 3–13–96; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 91

RIN 1018–AD71

Migratory Bird Hunting and Conservation Stamp (Federal Duck Stamp) Contest

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) is revising the regulations governing the conduct of the annual Migratory Bird Hunting and Conservation Stamp (Federal Duck Stamp) Contest. This proposed rule would allow the Service to keep pace with the increasing costs of running the 1996–97 Federal Duck Stamp Contest (Contest) and cover expenses associated with the program. The following changes are proposed by the Service: eligible species list; deadline for submitting entry; age requirement established to participate in contest; entry fee increase; subject matter of entry; and contest voting procedures.

DATES: Comments concerning these amendments must be received no later than April 15, 1996.

ADDRESSES: Send comments to: Manager of Licensing, Federal Duck Stamp Contest, U.S. Fish and Wildlife Service, Department of the Interior, 1849 C Street, NW, Suite 2058, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mrs. Lita F. Edwards, (202) 208–4354.

SUPPLEMENTARY INFORMATION: The Federal Duck Stamp Contest is the only Federal agency-run art contest and has been in existence since 1949 with the 1950 stamp the first to be selected in open competition. The Federal Duck Stamp's main use is a revenue stamp needed by waterfowl hunters. This year's Contest and species information follows:

1. Contest schedule:

1996–97 Federal Duck Stamp Contest—October 15–17, 1996

Public viewing—Tuesday, October 15 from 10:00 a.m. to 2:00 p.m.

Judging—Wednesday, October 16 at 10:30 a.m. through Thursday, October 17 at 9:00 a.m.

2. The Contest will be held at the Department of the Interior building, Auditorium (C Street entrance), 1849 C Street, NW, Washington, DC.

3. The *five* eligible species for the Contest: (1) Black Duck; (2) Canada Goose; (3) Greater Scaup; (4) American Green-winged Teal; and (5) Northern Pintail.

As part of an effort to keep pace with the cost of administering and making minor improvements to the Contest, the Service proposes the following changes to this year's contest:

1. The Service is correcting the common and Latin name of American Green-winged Teal.

2. Persons wishing to enter this year's Contest may submit entries anytime after July 1, but *all* entries must be postmarked no later than midnight Friday, August 30, 1996.

3. The Service is increasing the fee for art contest entrants to $100.00. Contest expenses have escalated each year and this increase will defray Service expenses in administering the Contest.

4. The Service is requiring that all entrants must be 18 years of age as of July 1 to participate in the Contest, as 18 is considered the general age of majority by most jurisdictions.

5. The Service is clarifying that other living creatures, scenes, designs may be part of the design as long as living migratory birds are the dominant feature.

6. Contest procedures are modified for the third round of judging to allow more consistent scores.

This regulation was not subject to Office of Management and Budget review under Executive Order 12866. These proposed regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements. The Department of the interior has determined that this regulation will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) as the changes/revisions to the Contest will affect individuals not businesses or other small entities as defined in the Act. Due to tight timeframes associated with the contest rules, the Service is allowing only 30 days for public comment.

List of Subjects in 50 CFR Part 91

Hunting, Wildlife.

Accordingly, Title 50, Part 91 of the Code of Federal Regulations is proposed to be amended as follows:

PART 91—[AMENDED]

1. The authority citation for Part 91 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 718j; 31 U.S.C. 9701.

2. Section 91.4 is amended by revising paragraph (e)(4) to read as follows:

§ 91.4 Eligible species.

* * * * *

(e) * * *

(4) American Green-winged Teal (Anas crecca carolinensis)

* * * * *

3. Section 91.11 is amended by revising paragraph (b) to read as follows:

§ 91.11 Contest deadlines.

* * * * *

(b) Entries must be postmarked no later than midnight of August 30.

4. Section 91.12 is revised to read as follows:

§ 91.12 Contest eligibility.

United States citizens, nationals, or resident aliens are eligible to participate in the contest. Any person who has won the contest during the preceding three years will be ineligible to submit an entry in the current year's contest. All entrants must be 18 years of age as of July 1 to participate in the Federal Duck Stamp Contest. Contest judges and their relatives are ineligible to submit an entry. All entrants must submit a non-refundable fee of $100.00 by a cashiers check, certified check, or money order made payable to: U.S. Fish and Wildlife Service. (Personal checks will not be accepted.) All entrants must submit signed Reproduction Rights and Display and Participation Agreements.

5. Section 91.14 is revised to read as follows:

§ 91.14 Restrictions on subject matter of entry.

A live portrayal of any bird(s) of the five or fewer identified eligible species must be the dominant feature of the design. The design may depict more than one of the eligible species. Designs may include, but are not limited to, hunting dogs, hunting scenes, use of waterfowl decoys, National Wildlife Refuges as the background of habitat scenes, and other designs that depict the sporting, conservation, stamp collecting and other uses of the stamp. The overall mandate will be to select the best design that will make an interesting, useful and attractive duck stamp that will be accepted and prized by hunters, stamp collectors, conservationists, and others. The design must be the contestant's original creation and may not be copied or duplicated from previously published art, including photographs. An entry submitted in a prior contest that was not selected for the Federal or a state stamp design may be submitted in the current contest if it meets the above criteria.

6. Section 91.24 is amended by revising paragraph (h) to read as follows:

§ 91.24 Contest procedures.

* * * * *

(h) In the third round of judging, the judges will vote on the remaining entries using the same method as in round two, except they would indicate a numerical score from 3 to 5 for each entry. The Contest Coordinator will tabulate the final votes and present them to the Director, U.S. Fish and Wildlife Service, who will announce the winning entry as well as the entries that placed second and third.

* * * * *

Dated: March 1, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–6124 Filed 3–13–96; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 61, No. 51
Thursday, March 14, 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

Submission for OMB Review; Comment Request

March 8, 1996.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Department Clearance Officer, USDA, OIRM, Ag Box 7630, Washington, D.C. 20250–7630. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

Food and Consumer Service

- *Title:* Integrated Quality Control Review Schedule.

Summary: The Integrated Review Schedule collects both Quality Control and case characteristic data. The information needed to complete the Integrated Review Schedule is obtained from the respective Aid for Dependent Children, Food Stamps and Medicaid case records and State Quality Control finding.

Need and Use of the Information: Data collected on the Integrated Review Schedule is used by the Food and Consumer Service and the States to monitor and reduce errors, develop policy strategies, and analyze household characteristic data. In addition, FCS also uses this data to determine sanctions and incentives based on error rate performance, and to estimate the impact of some program changes to Food Stamp Program participation and costs by analyzing the available household characteristic data.

Description of Respondents: State, Local, or Tribal Government; Individuals or households; Federal Government.

Number of Respondents: 61,840.

Frequency of Responses: Recordkeeping; Reporting: Weekly, Monthly.

Total Burden House: 63,299.

Forest Service

- *Title:* Financial Statement and Verification of Financial Information.

Summary: Information is submitted to a Forest Service Office to review the financial status of an applicant or successful bidder who is unknown or has prior public record of financial problems including bankruptcies and prior contract defaults.

Need and Use of the Information: This financial information provides the Forest Service with needed data to determine whether the respondent: (a) has the financial ability to carry out the terms of the contract or permit, (b) should be granted deferred payment status, or (c) be granted a settlement under certain defaulted contracts.

Descritpion of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government.

Number of Respondents: 350.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 6,714.

Forest Service

- *Title:* Research for Improving Public Involvement.

Summary: In order to meet the information needs of the Wayah Ranger District on the Natahala National Forest a study has been commissioned to provide information on how typical non-participants differ from participants in the district's public involvement process.

Need and use of the Information: Information gathered will be used by planners, managers, policy analysts, and the research community in resource management areas, and may be used in regional offices, regional research stations, and legislative offices. Data will be used for short-term operational decisions, and in longer-term analyses for districts land management planning.

Description of Respondents: Individuals or households.

Number of Respondents: 436.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 109.

Food Safety and Inspection Service

- *Title:* Use of Sorbitol in Cooked Roast Beef Products.

•*Summary:* The Food Safety Inspection Service is permitting plants to use up to two percent sorbitol as a sweetener and to reduce charring in roast beef products. Labels would need to be modified to properly label products containing sorbitol.

Need and Use of the Information: The information collected will be used to approve labels and to ensure compliance with regulations.

Description of Respondents: Business or other for-profit.

Number of Respondents: 315.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 788.

Emergency Processing of This Submission Has Been Requested by *April 01, 1996.*

Food Safety and Inspection Service

- *Title:* Official Marking Devices, Labeling, and Packaging Material.

Summary: Meat and Poultry establishment must develop product labels in accordance with regulations and have the labels approved for use.

Need and Use of the Information: The information is needed in order to prevent product adulteration, misbranding, and mislabeling.

Description of Respondents: Business or other for-profit.

Number of Respondents: 37,417.

Frequency of Responses: Recordkeeping; reporting: On occasion.

Total Burden Hours: 298,375.

Food Safety and Inspection Service

- *Title:* Food Standards: Requirements for Processed Meat and Poultry Products Named by use of An Expressed Nutrient Content Claim and a Standardized Term.

Summary: The Food Safety Inspection Service is proposing to amend The Federal Meat and Poultry products inspection regulation to establish a general definition and standard of identity for standardized meat and poultry food products that have been modified to qualify for use of an expressed nutrient content claim in their product name. Such products must have approved labels.

Need and Use of the Information: The information is needed to assist consumers in maintaining healthy dietary practices; to increase regulatory flexibility and support product innovation and provide consumers with an informative nutrition labeling system.

Description of Respondents: Business or other for profit.

Number of Respondents: 100.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 625.

Donald E. Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 96–6123 Filed 3–13–96; 8:45 am]

BILLING CODE 3410–01–M

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Biotechnology Research and Development Corporation of Peoria, Illinois, an exclusive license for U.S. Patent Application Serial No. 08/095,552, filed July 26, 1993, entitled ''A Composition Containing 2-Deoxy-D-Glucose and *Candida saitoana* and Method of Use for the Biological Control of Postharvest Diseases,'' and U.S. Patent Application Serial No. 08/336,079, filed November 7, 1994, entitled ''Bioactive Coating for Harvested Commodities.'' Notice of Availability for U.S. Patent Application Serial No. 08/095,552 was published in the Federal Register on September 24, 1993, and Notice of Availability for U.S. Patent Application Serial No. 08/336,079 was published in the Federal Register on April 19, 1995.

DATES: Comments must be received on or before May 13, 1996.

ADDRESSES: Send Comments to: USDA, ARS, Office of Technology Transfer, Room 415, Building 005, BARC—West, Baltimore Boulevard, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Biotechnology Research and Development Corporation has submitted a complete and sufficient application for a license. 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 sixty days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which 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.

R. M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 96–6058 Filed 3–13–96; 8:45 am]

BILLING CODE 3410–03–M

Forest Service

Rocky Mountain Region; Environmental Impact Statement for the Stevens Gulch Road and Related Timber Sales, Grand Mesa, Uncompahgre and Gunnison National Forests, Delta County, CO

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to supplement a final environmental impact statement.

SUMMARY: The Forest Service will prepare a supplement to the final environmental impact statement for the Stevens Gulch Road and Related Timber Sales located on the Gunnison National Forest, Paonia Ranger District.

DATES: Comments concerning the scope and issues of the analysis should be received 45 days after publication of the Draft Supplement to the Final EIS: April, 1996. Final Supplement to the Final EIS: June, 1996.

ADDRESSES: Send written comments to Ray Kingston, District Ranger, Paonia Ranger District, P.O. Box 1030, Paonia, CO 81428.

FOR FURTHER INFORMATION CONTACT: Carol McKenzie, Silviculturist, Forest Supervisor's Office, 2250 Hwy 50, Delta, CO, Gunnison, CO 81416, (970) 874–7691 or Andrea Wang, Wildlife Biologist, Paonia Ranger District, P.O. Box 1030, Paonia, CO 81428, (970) 527–4131.

SUPPLEMENTARY INFORMATION: The Forest Service is proposing to prepare a supplement to the final environmental impact statement for the Stevens Gulch Road and Related Timber Sales. In accordance with FSH 1909.15 the final environmental impact statement for the Stevens Gulch road and Related Timber Sales has been reviewed by an interdisciplinary team. Significant new information have been discovered. The Forest Service is considering alternatives to change the Record of Decision in relation to the timing of use of existing and future roads within the Stevens Gulch project area used by active timber sales; and, mitigation measures to protect species identified in the updated Biological Evaluation and Biological Assessment. The scope and analysis of the proposed supplement to the Final EIS will be limited to these alternatives and mitigation measures.

The original Notice of Intent for this project was published in the Federal Register Vol. 108, No. 49, June 4, 1985 Page 23092. A Record of Decision and Final environmental impact statement were approved September 12, 1986 by then Forest Supervisor Evans. This decision was upheld on August 7, 1987 by then Regional Forester Cargill. A second level appeal was then filed on September 8, 1987 to the Chief of the U.S. Forest Service. Regional Forester Cargill's decision was upheld on October 24, 1988.

The comment period on the draft supplemental final environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the Federal Register.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft supplemental environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final supplemental environmental impact statement. *City of Angoon v. Hodel,* (9th Circuit, 1986) and *Wisconsin Heritages, Inc. v. Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections re made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final supplement to the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft supplement to the final environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft supplement or the merits of the alternatives formulated and discussed in the draft supplement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The responsible official for this supplement to the final environmental impact statement is Robert L. Storch, Forest Supervisor, Grand Mesa, Uncompahgre and Gunnison National Forests, 2250 Highway 50, Delta, Colorado 81416.

Dated: March 1, 1996.

Robert L. Storch,

Forest Supervisor.

[FR Doc. 96–6115 Filed 3–13–96; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted the following information collection requirement to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. An emergency clearance is being requested with a response date of March 15, 1996, from OMB.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: The GLOBE Program.

Agency Number: None.

OMB Number: None.

Type of Request: New Collection—Emergency Processing Requested.

Burden: 798 hours.

Number of Respondents: 1,521.

Avg Hours Per Response: Ranges between 19 and 30 minutes depending on the survey version being completed.

Needs and Uses: Global Leaning and Observations to Benefit the Environment (GLOBE) is an international environmental science and education program that joins students, teachers, and scientists from around the world to study the global environment. Information is needed to guide planning for the rapid growth of the GLOBE Program. Participating teachers and students will be requested to complete a survey so that necessary program implementation changes are made before substantial growth occurs.

Affected Public: Not-for-profit institutions, individuals.

Frequency: One-time. Should the survey be continued, a follow-up submission will be made.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Victoria Wassmer, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC's Acting Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Victoria Wassmer, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: March 8, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–6037 Filed 3–13–96; 8:45 am]

BILLING CODE 3510–12–P

Bureau of Export Administration

Requests for the Appointment of a Technical Advisory Committee; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 13, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Stephen Baker, U.S. Dept. of Commerce, 14th & Constitution Ave., NW, Room 6877, Washington, DC, 20230.

SUPPLEMENTAL INFORMATION:

I. Abstract

The Technical Advisory Committees (TACs) were established to advise and assist the U.S. Government on export control matters. In managing the operations of the TACs, the Department of Commerce is responsible for implementing the policies and procedures prescribed in the Federal Advisory Committee Act. The TACs advise the government on proposed revisions to export control lists, licensing procedures, assessments of the foreign availability of controlled products, and export control regulations.

Any producers which are subject to export controls because of their significance to the national security of the U.S., or are being considered for such controls, may request the Secretary of Commerce to establish a TAC. Such requests must include a description of the articles, materials, or supplies including technical data, and other information supporting why a committee should be established. The information will be used by BXA to determine whether to establish a TAC.

II. Method of Collection

Written request to BXA.

III. Data

OMB Number: 0694–0100.

Form Number: None.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 1.

Estimated Time Per Response: 5 hours per response.

Estimated Total Annual Burden Hours: 5.

Estimated Total Annual Cost: $200 (Respondents will not need to purchase equipment or materials to provide information).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; © ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the

use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: March 8, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–6038 Filed 3–13–96; 8:45 am]

BILLING CODE 3510–DT–P

Foreign-Trade Zones Board

[Docket 77–95]

Foreign-Trade Zone 168—Fort Worth, TX; Application for Expansion, Extension of Comment Period

The comment period for the pending application of the Dallas/Fort Worth Maquila Trade Development Corporation, grantee of FTZ 168, requesting authority to expand its zone (Docket 77–95, filed 11/21/95, 60 FR 61528, 11/30/95, extended to 3/1/96, 61 FR 3670, 2/1/96), is further extended to March 22, 1996, to allow interested parties additional time in which to comment on the proposal.

Comments in writing are invited during this period. Submissions should include 3 copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 3716, Washington, DC 20230.

Dated: March 7, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–6149 Filed 3–13–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Extension of Time Limit for Antidumping Duty Administrative Review

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

ACTION: Extension of Time Limits for Antidumping Duty Administrative Review on Gray Portland Cement and Clinker from Mexico.

SUMMARY: The Department of Commerce (the Department) is extending the time limits for preliminary and final results of antidumping duty administrative review of the antidumping order on gray portland cement and clinker from Mexico, pursuant to the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (hereinafter, ''the Act'').

EFFECTIVE DATE: March 14, 1996.

FOR FURTHER INFORMATION CONTACT: Nathan Bartholomew, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, Telephone (202) 482–3362.

SUPPLEMENTARY INFORMATION: Under the Act, the Department may extend the deadline for completion of administrative reviews if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. In the instant case, the Department has determined that it is not practicable to complete the review within the statutory time limit. *See* Memorandum from Joseph A. Spetrini to Paul L. Joffe (February 26, 1996).

Since it is not practicable to complete the review of gray portland cement and clinker from Mexico within the time limits mandated by the Act (245 days from the last day of the anniversary month for preliminary results, 120 additional days for final results), pursuant to Section 751(a)(3)(A) of the Act, the Department is extending the time limits for the aforementioned review as follows:

Product	Country	Review period	Initiation date	Prelim due date	Final due date
Gray Portland Cement and Clinker	Mexico	8/1/94–7/31/95	9/14/95	9/27/96	4/2/97

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–6147 Filed 3–13–96; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–703]

Certain Internal-Combustion, Industrial Forklift Trucks From Japan; Extension of Time Limits of Antidumping Duty Administrative Review

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

ACTION: Notice of Extension of Time Limits of Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is extending the time limits for preliminary and final results in the administrative review of the antidumping duty order on certain internal-combustion, industrial forklift trucks from Japan, covering the period June 1, 1994, through May 31, 1995, since it is not practicable to complete the review within the time limits mandated by the Tariff Act of 1930, as amended, 19 U.S.C. 1675(a) (the Act).

EFFECTIVE DATE: March 14, 1996.

FOR FURTHER INFORMATION CONTACT: Davina Hashmi or Michael Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce has received a request to conduct an administrative review of the antidumping duty order on certain internal-combustion, industrial forklift trucks from Japan. On August 16, 1995, the Department initiated this administrative review covering the period June 1, 1994, through May 31, 1995. The Department adjusted the time limits by 28 days due to the government shutdowns, which lasted from November 14, 1995, to November 20, 1995, and from December 15, 1995, to January 6, 1996. See Memorandum to the file from Susan G. Esserman, Assistant Secretary for Import Administration, January 11, 1996. As adjusted, the current time limits are March 29, 1996, for the preliminary results and July 27, 1996, for the final results.

It is not practicable to complete this review within the time limits mandated by section 751 (a) (3) (A) of the Act. Therefore, in accordance with that section, the Department is extending the time limits for the preliminary results to July 27, 1996, and for the final results to January 23, 1997.

Interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 353.34 (b).

These extensions are in accordance with section 751 (a) (3) (A) of the Act.

Dated: March 7, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–6150 Filed 3–13–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–429–601]

Solid Urea From the German Democratic Republic: Termination of Changed Circumstances Review

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

ACTION: Notice of Termination of Changed Circumstances Review of Solid Urea from the German Democratic Republic.

SUMMARY: On May 1, 1995, the Department of Commerce (''the Department'') initiated a second changed circumstances review of the antidumping duty order on solid urea from the former German Democratic Republic (GDR). In the notice of initiation, the Department stated that it would calculate a new cash deposit rate using a market-economy analysis for any shipments of solid urea from the five German states (Brandenburg, Mecklenburg-Vorpommern, Saxony, Saxony-Anhalt, and Thuringia (plus any other territory included in the former GDR)) that formerly constituted the GDR (hereinafter ''the Five States'') occurring after October 2, 1990 and before May 1, 1995. The Department found that no shipments have occurred during this period and is now terminating this changed circumstances review.

EFFECTIVE DATE: March 14, 1996.

FOR FURTHER INFORMATION CONTACT: Donna Kinsella, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–3818 or telefax (202) 482–1388.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 1995, the Department published in the Federal Register (60 FR 21067) the initiation of a second changed circumstances review which stated that as of October 3, 1990, producers located in the Five States have been operating in a market-oriented economy. In the initiation notice the Department stated that it would calculate a new cash deposit rate using a market-economy analysis for any shipments of solid urea from the Five States occurring after October 2, 1990 and before May 1, 1995. The Department has found no evidence of shipments occurring during this time period and is therefore terminating this second changed circumstances review.

This notice is published pursuant to section 353.22(f) of the Department's regulations (19 CFR § 353.22(f) (1995)).

Dated: March 5, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–6148 Filed 3–13–96; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

[I.D. 030796D]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Mackerel Stock Assessment Panel (Panel).

DATES: The meeting will begin at 1:00 p.m. on April 15, 1996, and will conclude at 12:00 noon on April 18, 1996.

ADDRESSES: The meeting will be held at NMFS Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL.

Council address: 5401 West Kennedy Boulevard, Tampa, FL 33609;

FOR FURTHER INFORMATION CONTACT: Wayne Swingle, Executive Director; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Panel will review stock assessment information for king and Spanish mackerels and cobia and will develop ranges of acceptable biological catch for each of these stocks for the 1996–1997 fishing season.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by April 8, 1996.

Dated: March 8, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–6138 Filed 3–13–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 030796B]

North Pacific Fishery Management Council; Committee Meeting

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

ACTION: Notice of meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Observer Advisory Committee will hold a meeting.

DATES: The meeting will be held on March 28–29, 1996, beginning at 9:00 a.m. on March 28, and ending by 5:00 p.m. on March 29.

ADDRESSES: The meeting will be held in the Observer Training Room of the Alaska Fisheries Science Center, 7600 Sand Point Way NE., Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Chris Oliver; telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION: The Committee will review a Request for Proposals or Statement of Work, whichever is available, in connection with the ''third-party umbrella'' organization to be utilized under the Council's modified pay-as-you-go observer program. The Committee will provide recommendations to the Council at its April 17–22, 1996 meeting in Anchorage, AK.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: March 8, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–6135 Filed 3–13–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 030796C]

North Pacific Fishery Management Council; Committee Meeting

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

ACTION: Notice of meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Improved Retention/Improved Utilization Committee will hold a meeting.

DATES: The meeting will be held on March 25–27, 1996, beginning at 9:00 a.m. on March 25, and concluding by 5:00 p.m. on March 27.

ADDRESSES: The meeting will be held at the Alaska Fisheries Science Center, 7600 Sand Point Way NE., Seattle, WA, Room 2079, Building 4.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Chris Oliver; telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION: The Committee will continue their discussions of the implementation aspects of measures to improve retention and utilization in the groundfish fisheries and prepare recommendations to provide to the Council at their meeting April 17–22, 1996 in Anchorage, AK.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: March 8, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–6137 Filed 3–13–96; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in Poland

March 8, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: March 18, 1996.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 435 and 443 are being reduced for special carryforward used during 1995.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 62404, published on December 6, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 8, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Poland and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996.

Effective on March 18, 1996, you are directed to reduce the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC):

Category	Twelve-month restraint limit [1]
435	11,596 dozen.
443	199,596 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1995.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–6152 Filed 3–13–96; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Cost Comparison Studies

The Air Force is conducting the following cost comparison studies in accordance with OMB Circular A–76, Performance of Commercial Activities.

Installation/Cost Comparison Study

Maxwell AFB, Alabama—Fuels Management
Maxwell AFB, Alabama—Grounds Maintenance
Maxwell AFB, Alabama—General Library
Eielson AFB, Alaska—Miscellaneous Services
Elmendorf AFB, Alaska—Power Production
Little Rock AFB, Arkansas—Transient Aircraft Maintenance
Travis AFB, California—Military Family Housing Maintenance
Buckley ANG Base, Colorado—Airfield Management
Eglin AFB, Florida—Child Care Center
Eglin AFB, Florida—Range Target Support
Tyndall AFB, Florida—Multi-Function Study: Base Operating Support & Backshop Aircraft Maintenance
Andersen AFB, Guam—Military Family Housing Maintenance
Andersen AFB, Guam—Refuse Collection
Andrews AFB, Maryland—Administrative Support
Otis ANGB, Massachusetts—Transient Aircraft Maintenance
Columbus AFB, Mississippi—Base Operating Support
Keesler AFB, Mississippi—Grounds Maintenance
Keesler AFB, Mississippi—Laundry
Nellis AFB, Nevada—Military Family Housing Maintenance

McQuire AFB, New Jersey—Military Family Housing Maintenance
Altus AFB, Oklahoma—Aircraft Maintenance
Tinker AFB, Oklahoma—Grounds Maintenance
Goodfellow AFB, Texas—Grounds Maintenance
Kelly AFB, Texas—Environmental
Lackland AFB, Texas—Animal Caretaking
Lackland AFB, Texas—Grounds Maintenance
Laughlin AFB, Texas—Aircraft Maintenance
Laughlin AFB, Texas—Base Operating Support
Sheppard AFB, Texas—Aircraft Maintenance
Hill AFB, Utah—Child Care Center
Bolling AFB, Washington DC—Military Family Housing Maintenance
Davis Monthan AFB, Arizona—Meteor Equipment Maintenance
Travis AFB, California—Administrative Support
Eglin AFB, Florida—Education Services
Eglin AFB, Florida—Library
Andersen AFB, Guam—Food Services
Andersen AFB, Guam—Transient Aircraft Maintenance
Scott AFB, Illinois—Administrative Support
Columbus AFB, Mississippi—Communication Functions
Keesler AFB, Mississippi—Communication Functions
Ellsworth, South Dakota—Shelf Stocking
Grand Forks, South Dakota—Administrative Switchboard

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–6114 Filed 3–13–96; 8:45 am]

BILLING CODE 3910–01–P

Department of the Army

Proposed Collection; Comment Request

AGENCY: Director of Information Systems for Command, Control, Communications, and Computers (DISC4), U.S. Army.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 13, 1996.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the United States Military Academy, Institutional Research and Analysis Division, ATTN: MAOR-R (DR. W. BURKE), BLDG, 2101, West Point, New York 10996. Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 614–0454.

Title: Reception Day Questionnaire—1996.

Needs and Uses: Comments from parents about their experience during Reception Day activities and suggestions from them for future improvements will help the Academy provide parents with the best possible support during visits. The information collected will be used to evaluate the activities and services offered by the Academy and make changes deemed advisable.

Affected Public: Individuals or households.

Annual Burden Hours: 336.

Number of Respondents: 1,343.

Responses Per Respondent: 1.

Average Burden Per Response: 15 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION: The U.S. Military Academy (USMA) invites parents of incoming cadets to the Academy on Reception Day, the day which cadets enroll at the Academy. On that day, parents are given an orientation to the Academy and briefing on cadet life. To improve support for parents attending Reception Day, perceptions about their experiences during that event are required. The Superintendent, USMA, delegates responsibility to the Director of Institutional Research for performing special institutional research projects such as program evaluations.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–6048 Filed 3–13–96; 8:45 am]

BILLING CODE 3710–08–M

Proposed Collection; Comment Request

AGENCY: Director of Information Systems for Command, Control, Communications, and Computers (DISC4), U.S. Army.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 13, 1996.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the United States Military Academy, Institutional Research and Analysis Division, ATTN: MAOR–R (DR. W. BURKE), BLDG, 2101, West Point, New York 10996. Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 614–0454.

Title: Plebe-Parent Weekend Questionnaire.

Needs and Uses: Comments from parents about their experiences during Plebe-Parent Weekend activities and suggestions from them for future improvements will help the Academy provide parents with the best possible support during visits. The information

collected will be used to evaluate the activities and services offered by the Academy and make changes deemed advisable.

Affected Public: Individual or households.

Annual Burden Hours: 301.

Number of Respondents: 1203.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION: The U.S. Military Academy (USMA) invites parents of first year cadets to the Academy for Plebe-Parent Weekend, an opportunity to visit with their sons/daughters and learn through activities and demonstrations about cadet life. To improve support for parents attending Plebe-Parent Weekend, perceptions about their experiences during that event are required. The Superintendent, USMA, delegates responsibility to the Director of Institutional Research for performing special institutional research projects such as program evaluations.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–6049 Filed 3–13–96; 8:45 am]

BILLING CODE 3710–08–M

Environmental Assessment and Finding of No Significant Impact for the Disestablishment of U.S. Army Aviation Troop Command, St. Louis, Missouri, and the Major Item Information Center, Logistics Support Activity, Letterkenny Army Depot, Chambersburg, Pennsylvania, to Redstone Arsenal, Alabama

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: In accordance with Public Law 101–510, the Defense Base Closure and Realignment Act of 1990, the Defense Base Closure and Realignment Commission recommended disestablishment of U.S. Army Aviation Troop Command. Additionally, the Major Item Information Center (MIIC), formally part of Systems Integration Management Activity-East (SIMA–E), will relocate to Redstone Arsenal as a part of the BRAC 1993 realignment of Letterkenny Army Depot, Chambersburg, Pennsylvania. The MIIC relocation is a 1993 BRAC Army discretionary move, which will merge MIIC with its parent activity, Logistics Support Activity, at Redstone Arsenal.

The Environmental Assessment (EA) evaluates the environmental impacts associated with the transfer of approximately 2,252 personnel and the renovation and construction projects required to accommodate the functions.

No significant project environmental impacts were identified. Potential for only minor or insignificant impacts are anticipated regarding air quality, noise, infrastructure, hazardous and toxic materials, and biological resources. Traffic impacts are not expected to be significant with the implementation of intersection improvements planned for the arsenal and roadway and intersection improvements planned for the surrounding area. Impacts from the construction of new facilities and the renovation of existing buildings are not expected to be significant with the implementation of Best Management Practices and required procedures. Potentially significant cumulative socioeconomic impacts were identified relating to population increase, the local economy, and public services. However, based on the environmental impact analyses found in the EA, which is hereby incorporated into this Finding of No Significant Impact (FNSI), it has been determined that implementation of the proposed action would not have significant direct impact on the quality of the natural or the human environment. Because no significant non-socioeconomic environmental impact would result from implementation of the proposed action, an Environmental Impact Statement is not required and will not be prepared.

DATES: Inquiries will be accepted by March 29, 1996.

ADDRESSES: Copies of the Environmental Assessment and Finding of No Significant Impact can be obtained by writing to the U.S. Army Engineer District, Mobile, ATTN: CESAM–PD–E (Mr. Neil Robison), P.O. Box 2288, Mobile, Alabama 36628–0001, or by calling (334) 690–3018, within 15 days of the date of the publication of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Neil Robison at 334–690–3018.

Dated: March 8, 1996.

Raymond J. Fatz,

Acting Deputy Assistant Secretary of the Army (Environmental Safety and Occupational Health), OASA (I,L&E).

[FR Doc. 96–6075 Filed 3–13–96; 8:45 am]

BILLING CODE 3710–08–M

Cargo Liability of Motor Carriers

AGENCY: Military Traffic Management Command (MTMC), DOD.

ACTION: Notice.

SUMMARY: The Military Traffic Management Command (MTMC), in coordination with the military services and the Defense Logistics Agency, is revising MTMC Freight Traffic Rules Publication No. 1A (MTRP No. 1A) to include the following changes to motor freight carrier liability for Freight All Kinds (FAK) shipments:

1. Shipments Weighing Less Than 15,000 Pounds. For all shipments weighing less than 15,000 pounds, carrier liability for loss and damage will be limited to the dollar amount of $50,000 or the actual amount of the loss and/or damage to the article(s), whichever is less. Should a shipper desire to declare and establish a cargo liability for an amount greater than $50,000, the carrier agrees to provide this increased liability coverage for $_____ for each $100 increase in loss and/or damaged cargo liability over the maximum liability.

2. Shipments Weighing 15,000 Pounds and Over. For all shipments weighing 15,000 pounds and over, carrier liability for loss and/or damaged cargo will be limited to the dollar amount of $150,000 or the actual amount of the loss and/or damage to the article(s), whichever is less. Should a shipper desire to declare and establish cargo liability for an amount greater than $150,000, the carrier agrees to provide this increased liability coverage for $_____ for each $100 increase in loss and/or damaged cargo liability over the maximum liability.

3. All Department of Defense (DOD) FAK shipments governed by this rules publication (MFTRP No. 1A) are subject to the released liabilities stated in Paragraphs 1 and 2 above. No other released liabilities apply, regardless of where they are published.

4. In case shipments require the carrier to obtain cargo liability insurance in excess of the above limitations, the carrier will be given 72 hours notice prior to the expected pickup date for the shipment.

EFFECTIVE DATE: This policy change will be effective July 1, 1996.

ADDRESSES: Headquarters, Military Traffic Management Command, ATTN: MTOP–QER, Room 630, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Ms. Crystal Hunter, MTOP–QER, (703) 681–6579, or Mr. Frank Galluzzo, MTOP–T, (703) 681–6094.

SUPPLEMENTARY INFORMATION: Effective March 1, 1996, MTMC Guaranteed Traffic Rules Publication No. 50 will revise maximum carrier liability for all DOD shipments governed by it provisions to $50,000 for each shipment weighing less than 15,000 pounds and $150,000 for each shipment weighing

15,000 pounds or more. The policy change covering FAK shipments (as described in MFTRP No. 1A, Items 112, 113, 115, and 116) standardizes carrier liability for all DOD FAK shipments by motor carriers, effective July 1, 1996, and will not apply to excluded commodities, such as engines, ammunition, and precious metals. Accordingly, the caption in Items 112 and 113 now providing a released value not exceeding $1.75 per pound, also the caption in Items 115 and 166 providing a released value not exceeding $2.50 per pound will be cancelled, effective July 1, 1996.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–6047 Filed 3–13–96; 8:45 am]

BILLING CODE 3710–08–M

Availability of Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning a Microsphere Drug Application Device

AGENCY: U.S. Army Medical Research and Materiel Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent No. 5,470,311 entitled ''Microsphere Drug Application Device'' and issued on November 28, 1995. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Staff Judge Advocate, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: Mr. Werten F.W. Bellamy, U.S. Army Intellectual Property Law Division, 901 North Stuart Street, ATTN: JALS–IP, Arlington, Virginia 22203–1837, voice phone (703) 696–8119 or telefax (703) 696–8116.

SUPPLEMENTARY INFORMATION: The invention includes an apparatus and methods for dispensing medicinals encapsulated in a biodegradable polymer in surgical and other wounds. The apparatus, a microcapsule drug applicator, allows the caregiver to implant or spread measured and uniform quantities of microencapsulated medicinals in or on surgical or traumatic wounds to prevent and/or treat infections. Specific examples where microencapsulated antibiotics may prove useful include: soft-tissue wounds; following debridement and reduction or fixation of open fractures; to osteomyelitic bone after surgical debridement; after surgical insertion of prostheses such as hip/knee replacements (arthroplasty); and following vascular surgery or grafting.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–6044 Filed 3–13–96; 8:45 am]

BILLING CODE 3710–08–M

Availability of Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning a Test for Quantitative Thrombin Time

AGENCY: U.S. Army Medical Research and Materiel Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent No. 5,476,771 entitled ''Test for Quantitative Thrombin Time'' and issued on December 19, 1995. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Staff Judge Advocate, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Moran, Patent Attorney, (301) 619–2065 or telefax (301) 619–7714.

SUPPLEMENTARY INFORMATION: The invention is a quantitative method for determining the plasma levels of thrombin-specific inhibitors which is based on the quantitative thrombin time using plasma dilutions, excess fibrinogen and thrombin. The plasma dilutions and excess fibrinogen act in concert to eliminate the effect that coagulopathies have on standard coagulation tests. The method is relatively simple and provides superior results to standard conventional tests. The method is suitable for performance in clinical hematology laboratories on a routine basis using commercially availability instrumentation.

Gregory D. Showalter,

Army Federal Register, Liaison Officer.

[FR Doc. 96–6043 Filed 3–13–96; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Finding of No Significant Impact for the Alternative Fuel Transportation Program

AGENCY: Department of Energy.

ACTION: Finding of No Significant Impact

SUMMARY: The Department of Energy (the Department) has prepared an Environmental Assessment (Assessment) (DOE/EA–1151) to identify and evaluate the potential environmental impacts of the Alternative Fuel Transportation Program. The program implements statutorily-imposed alternative fueled vehicle acquisition requirements that apply to certain alternative fuel providers and some State government vehicle fleets.

Based on the analysis in DOE/EA–1151, the Department has determined that the proposed action is not a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act (NEPA) of 1969, as amended. Therefore, preparation of an Environmental Impact Statement is not required, and the Department is issuing this Finding of No Significant Impact (Finding).

FOR FURTHER INFORMATION CONTACT: Kenneth R. Katz, Program Manager, Office of Energy Efficiency and Renewable Energy (EE–33), U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585. (202) 586–6116.

For further information on the Department's general NEPA procedures, contact: Ms. Carol Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585. (202) 586–4600 or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION: The Environmental Assessment addresses the effects of the Final Rule for the Alternative Fuel Transportation Program on the human environment. The Department proposed a rule for this program on February 28, 1995 (60 FR 10970), for the purpose of fulfilling its obligation under the Act to implement statutorily-imposed alternative fueled vehicle acquisition requirements in sections 501 and 507(o) of the Energy Policy Act of 1992, which apply to certain alternative fuel providers and some State government vehicle fleets. In proposing this rule, the Department determined that preparation of an Environmental Assessment was appropriate to determine whether an Environmental Impact Statement was required.

Proposed Action

The Final Rule for the Alternative Fuel Transportation Program implements the statutorily-imposed

alternative fueled vehicle acquisition requirements in sections 501 and 507(o) of the Energy Policy Act of 1992, which apply to certain alternative fuel providers and some State government vehicle fleets. The final rule principally covers: (1) interpretations necessary for affected entities to determine whether and to what extent the statutory requirements apply; (2) required procedures for exemptions and administrative remedies; and (3) a program of marketable credits to reward those who voluntarily acquire vehicles in excess of mandated requirements or before the requirements take effect. The purpose of DOE action is to reduce the use of imported petroleum by promoting alternative fuel use, infrastructure development and alternative fueled vehicle availability. The rationale for requiring fleets to acquire alternative fueled vehicles is that fleet demand for alternative fuels and alternative fueled vehicles should improve their availability to the public, increase public demand and cause a larger shift to alternative fuels than would be achieved in absence of the program.

Environmental Impacts

An analysis (DOE/EA–1151) was performed to determine the effect on air quality due to implementation of the final rule. Emissions were computed for five pollutants: nitrogen oxides (NO_X), carbon monoxide (CO), non-methane hydrocarbons (NMHC), particulate matter (PM–10), and carbon dioxide (CO_2). Five scenarios were considered based upon differing assumptions of fuel-type market penetrations over a 25-year period for both the alternative fuel provider and State fleets.

The air emissions analysis shows that, in 2020, the proposed action could reduce state and alternative fuel provider fleet emissions for all five pollutants. The Alternative Fuel Transportation Program is estimated to cause a less than 3% decrease in cumulative emissions from all highway vehicles in the United States by the end of the 25-year study period in 2020. However, the vehicles acquired due to this program, and thus the associated emissions improvements, would be concentrated in metropolitan areas. Because these vehicles represent only 0.5% of all light duty vehicles and air emissions are expected to be the principal environmental effect, other environmental effects are not quantified.

For each of the pollutant-scenario combinations, the results show a reduction in the emission levels. When the projected emissions in 2020 are compared with 1993 National Mobile Source Emissions, the reductions range from 0.001% for NO_X in the Gaseous Fuel Dominant Scenario to 0.15% for CO in the Gaseous Fuel Dominant with EVs Scenario and the New Technology Dominant Scenario. When the emissions from the entire 25-year study period are compared with 1993 National Mobile Source Emissions, the reductions range from 0.02% for NO_X in the Gaseous Fuel Dominant Scenario to 2.53% for CO in the Gaseous Fuel Dominant with EVs Scenario.

Although vehicle manufacturing, conversion and delivery affect the environment, the Environmental Assessment assumes that the effects of these activities for alternative fueled vehicles are virtually the same as for conventional vehicles. Therefore, the assessment assumes that there will not be incremental environmental effects from manufacturing or converting and delivering AFVs.

The program is projected to displace 50 trillion Btu (0.34%) of gasoline use in light duty vehicles in 2010. Similarly, petroleum extraction, gasoline production, and gasoline delivery infrastructure and delivery activities would be reduced not more than 0.34%. Because this is below the level of significance, the assessment does not quantify the incremental environmental effects of raw materials acquisition, production, or fuel transportation for alternative fuels or petroleum.

The program includes the resale and ultimate disposal of fleet vehicles. Air emissions of AFVs and conventional vehicles are quantified for the entire useful life of the vehicle, irrespective of vehicle ownership, so resale does not affect the analysis. Disposal of AFVs would be similar to disposal of conventional vehicles, with the exception of electric vehicle battery disposal. Batteries from electric vehicles are the principal waste that is different under the proposed action, compared to conventional vehicle waste under the no action alternative. At most, it is estimated that the electric vehicles acquired under the program will only represent 2.2% of the total number of electric vehicles on the road in 2010. Currently the infrastructure for the disposal of lead-acid batteries results in 98% recycling. Other battery materials may be used in the future, but the new battery technologies are also expected to be recycled.

For further information on other environmental effects of the alternative fueled vehicles that will be acquired in this program, DOE refers interested stakeholders to the Environmental Assessment (DOE/EA–1151), which can be obtained from Docket Number EE–RM–95–110. For further information concerning the docket: Andi Kasarsky, (202) 586–3012.

Alternatives Considered

Actions other than the proposed action could fulfill the goals of the Alternative Fuel Transportation Program, but DOE is required by the Energy Policy Act to proceed with the proposed action, and therefore no alternative actions other than the No Action alternative were considered in the assessment.

A No Action alternative was considered and was found not to meet the mandate of the Energy Policy Act. However, the no action alternative serves as a baseline for evaluating the environmental effects of the program. If no action were taken, fleets would be expected to acquire fewer alternative fueled vehicles than if the proposed action were taken. The incremental effects of additional alternative fueled vehicle acquisitions, not the total effects, were considered in the Environmental Assessment. The analysis defines a reference, or no action, case and five different scenarios that are used to represent possible outcomes of the proposed action. The difference between the reference case and any of the alternative scenarios analytically defines the incremental effects.

Determination

Based on the analysis in the Environmental Assessment, the Department has determined that the implementation of the Alternative Transportation Program does not constitute a major Federal action significantly affecting the quality of the human environment, within the meaning of the NEPA. Therefore, the preparation of an Environmental Impact Statement is not required and the Department is issuing this Finding of No Significant Impact.

Issued at Washington, D.C., this 5th day of March, 1996.

Brian T. Castelli,

Chief-of-Staff, Energy Efficiency and Renewable Energy.

[FR Doc. 96–5701 Filed 3–13–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

Proposed Information Collection and Request for Comments (FERC–510)

March 8, 1996.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted within 60 days of the publication of this notice.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael P. Miller, Information Services Division, ED–12.4, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael P. Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at mmiller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Abstract: The information collected under the requirements of FERC–510 ''Application for the Surrender of a Hydropower License'' (OMB No. 1902–0068) is used by the Commission to implement the statutory provisions of Part 1, Sections 4(e), 6 and 13 of the Federal Power Act, 16 U.S.C. 797(e), 799 and 806. Section 4(e) gives the Commission the authority to issue licenses for the purpose of constructing, operating and maintaining dams, water conduits, reservoirs, powerhouses, transmission lines or other project works necessary or convenient for developing and improving navigation, transmission and utilization of power over which Congress has jurisdiction. Section 6 gives the Commission the authority to prescribe the conditions of the licenses including the revocation and/or surrender of the license. Section 13 defines the Commission's authority to delegate time periods for when a license must be terminated if project construction has not begun. Surrender of a license may be desired by a licensee when a licensed project is retired or not constructed. The commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Sections 6.1 through 6.4.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

No. of respondents annually (1)	No. of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
10	1	10	100

Estimated cost burden to respondents: 100 hours/2,087 hours per year × $102,000 per year=$4,887.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) 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; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including 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.

Lois D. Cashell,

Secretary.

[FR Doc. 96–6117 Filed 3–13–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–310–001 and CP94–260–004]

Algonquin Gas Transmission Company; Notice of Amended Application

March 8, 1996.

Take notice that on March 1, 1996, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1 the following tariff sheets, with an effective date of April 1, 1996:

Fifth Revised Sheet No. 20
Original Sheet Nos. 36–37
Alternate Original Sheet Nos. 36–37
Sheet Nos. 38–39
Second Revised Sheet No. 100
Sheet Nos. 238–240
Original Sheet Nos. 241–248
Sheet Nos. 249–599
Third Revised Sheet Nos. 678–680
Second Revised Sheet No. 680A
Second Revised Sheet No. 710
Third Revised Sheet No. 712
Second Revised Sheet No. 799
Sheet Nos. 936–939
Original Sheet Nos. 940–946
Sheet Nos. 947–1099

Algonquin states that the purpose of this filing is to comply with the Commission's order issued June 14, 1995, in Docket Nos. RP95–310–000 and CP94–260–001 and 002. Algonquin states that the June 14 order directed Algonquin to file, 30 days prior to the expected commencement of service under Rate Schedule AFT–CL, tariff sheets that are consistent with the proforma AFT–CL tariff sheets previously submitted in these dockets.

Algonquin also states that the rates reflected on Original Sheet Nos. 36–37 reflects the rates for which Algonquin has sought approval in an amendment filed February 20, 1996 in Docket No. CP94–260–003 and the rates on Alternate Original Sheet Nos. 36–37 reflect the initial rate approval in the April 19, 1995, and June 14, 1995 orders

in this proceeding. Algonquin further states that the amendment seeks approval of a revised initial rate to reflect increases in the cost of the proposed facilities, due primarily to delays in the in-service date to accommodate the needs of Canal Electric Company and Montaup Electric Company, the transportation customer.

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 §§ 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 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. 96–6064 Filed 3–13–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–227–000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

March 8, 1996.

Take notice that on March 4, 1996, Northwest Pipeline Gas Corporation (Northwest), P.O. Box 58900, Salt Lake City, Utah, 84158–0900, filed in Docket No. CP96–227–000 a request pursuant to Section 157.205, 157.216, and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216 and 157.211) for approval to abandon certain obsolete facilities at the Finley Meter Station in Benton County, Washington, and to construct and operate modified replacement facilities at this station to more efficiently accommodate existing firm maximum daily delivery obligations (MDDO) at this delivery point to Cascade Natural Gas Corporation (Cascade), under Northwest's blanket certificate authority issued in Docket No. CP82–433–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to modify an existing meter station located in Benton County, Washington, by replacing the existing 2-inch positive displacement meter and the existing 3-inch turbine meter with a single 2-inch turbine meter. It is indicated that as a result of these modifications, the maximum design capacity of the meter station will decrease from 1,597 Dth per day from Northwest's Hedges Lateral to approximately 1,310 Dth per day at 300 psig. It is further indicated that the modified station will still be adequate to accommodate historically experienced flow rates as well as the existing MDDO's at this delivery point.

Northwest states that the estimated total cost of the proposed facility replacements is approximately $28,628 and that Northwest will not require any cost reimbursement from Cascade.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene 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 activities 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 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. 96–6062 Filed 3–13–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1197–000, et al.]

Portland General Electric Company, et al. Electric Rate and Corporate Regulation Filings

March 8, 1996.

Take notice that the following filings have been made with the Commission:

1. Portland General Electric Company

[Docket No. ER96–1197–000]

Take notice that on February 28, 1996, Portland General Electric Company (PGE), tendered for filing under FERC Electric Tariff, 1st Revised Volume No. 2, an executed Service Agreement between PGE and El Paso Electric Company.

Pursuant to 18 CFR 35.11 and the Commission's order issued July 30, 1993 (Docket No. PL93–2–002), PGE respectfully requests the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the executed Service Agreement to become effective March 1, 1996.

Copies of this filing were served upon El Paso Electric Company.

Comment date: March 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. The Cleveland Electric Illuminating Company and The Toledo Edison Company Market Responsive Energy, Inc.

[Docket Nos. EC96–14–000, ER95–1104–000 and ER95–1295–000]

Take notice that on February 29, 1996, The Cleveland Electric Illuminating Company (CEI) and The Toledo Edison Company (TE) tendered for filing revised open access tariffs for point-to-point transmission service and for network integration service that are to be implemented by Centerior Electric Company (Centerior), and service agreements for service to be rendered under the Point-to-Point Transmission Service to the City of Cleveland, Ohio and to American Municipal Power-Ohio, Inc. as agent for the City of Painesville, Ohio. CEI and TE have proposed to make their open access transmission tariffs effective upon the consummation of the merger of CEI and TE into Centerior.

CEI and TE also submitted testimony and exhibits of witnesses on behalf of Centerior that constitute it case-in-chief in support of the proposed tariffs. CEI and TE state that their filing is fully responsive to the Commission's Order Finding Transmission Tariffs Deficient and Deferring Action on Related Applications for Merger and Market-Based Rates issued December 20, 1995 in the above-captioned proceedings. CEI and TE further state that their revised open access transmission tariffs are in conformance with the applicable Commission policies and request that the Commission promptly approve the merger of CEI and TE.

Comment date: March 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Southern California Edison Co.

[Docket No. ER96–1198–000]

Take notice that on February 28, 1996, Southern California Edison Company (Edison), tendered for filing changes in rates for transmission service as embodied in Edison's agreements with the following entities:

Entity	FERC rate schedule No.
1. City of Anaheim.	130, 246.6, 246.8, 246.13, 246.29, 246.32, 246.33, 246.36
2. City of Azusa .	160, 247.4, 247.6, 247.8, 247.24, 247.29
3. City of Banning	159, 248.5, 248.7, 248.9, 248.24, 248.29
4. City of Colton .	162, 249.4, 249., 249.8, 249.24, 249.29
5. City of Riverside.	129, 250.6, 250.8, 250.10, 250.15, 250.21, 250.27, 250.30, 250.35
6. City of Vernon	149, 154.7, 172, 207, 272, 276, 338
7. Arizona Electric Power Cooperative.	131, 161
8. Arizona Public Service Company.	185, 348
9. California Department of Water Resources.	38, 112, 113, 181, 342
10. City of Burbank.	166
11. City of Glendale.	143
12. City of Los Angeles Department of Water and Power.	102, 118, 140, 141, 163, 188, 219
13. City of Pasadena.	158
14. Coastal Electric Services Company.	347
15. Imperial Irrigation District.	259, 268
16. Metropolitan Water District of Southern California.	292
17. M–S–R Public Power Agency.	153, 339
18. Northern California Power Agency.	240
19. Pacific Gas and Electric Company.	117, 147, 256, 381
20. PacifiCorp	275
21. Rainbow Energy Marketing Corporation.	346
22. San Diego Gas & Electric Company.	151, 274, 302
23. Western Area Power Administration.	120

Pursuant to these rate schedules, the rate changes result from a change in the rate of return from 9.80% to 9.55% authorized by the California Public Utilities Commission, effective January 1, 1996.

Edison is requesting waiver of the 60-day prior notice requirement and requests that the Commission assign an effective date of January 1, 1996, to the changes in rates for transmission service.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: March 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Cinergy Services, Inc.

[Docket No. ER96–1199–000]

Take notice that on February 28, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Non-Firm Point-to-Point Transmission Service Tariff (the Tariff) entered into between Cinergy and Tennessee Valley Authority.

Comment date: March 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Southern Company Services, Inc.

[Docket No. ER96–1201–000]

Take notice that on February 28, 1996, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (Southern Companies), tendered for filing an Interchange Service Contract between Southern Companies and InterCoast Power Marketing Company. The Interchange Service Contract establishes the terms and conditions of power supply, including provisions relating to service conditions, control of system disturbances, metering and other matters related to the administration of the agreement.

Comment date: March 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Northern Indiana Public Service Company

[Docket No. ER96–1202–000]

Take notice that on February 28, 1996, Northern Indiana Public Service Company tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and Southern Energy Marketing, Inc.

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide services to Southern Energy Marketing, Inc. under Northern Indiana Public Service Company's Power Sales Tariff, which was accepted for filing by the Commission and made effective by Order dated August 17, 1995 in Docket No. ER95–1222–000. Northern Indiana Public Service Company and Southern Energy Marketing, Inc. requests waiver of the Commission's sixty-day notice requirement to permit an effective date of March 1, 1996.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: March 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Southern Company Services, Inc.

[Docket No. ER96–1203–000]

Take notice that on February 28, 1996, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (Southern Companies), tendered for filing an Interchange Service Contract between Southern Companies and Entergy Power, Inc. The Interchange Service Contract establishes the terms and conditions of power supply, including provisions relating to service conditions, control of system disturbances, metering and other matters related to the administration of the agreement.

Comment date: March 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Great Bay Power Corporation

[Docket No. ER96–1204–000]

Take notice that on February 28, 1996, Great Bay Power Corporation (Great Bay) tendered for filing a service agreement between PECO Energy Company and Great Bay for service under Great Bay's Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on November 11, 1993, in Docket No. ER93–924–000. The service agreement is proposed to be effective February 1, 1996.

Comment date: March 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Maine Public Service Company

[Docket No. ER96–1205–000]

Take notice that on February 28, 1996, Maine Public Service Company submitted agreements under its Umbrella Power Sales tariff.

Comment date: March 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. PECO Energy Company

[Docket No. ER96–1206–000]

Take notice that on February 28, 1996, PECO Energy Company (PECO), tendered for filing a letter from the

Executive Committee of the Western Systems Power Pool (WSPP), indicating that PECO had completed all the steps for pool membership (the WSPP Letter). PECO requests that the Commission amend the WSPP Agreement to include it as a member.

Because PECO has completed the arrangements set forth on page two of the WSPP Letter, PECO requests the Commission allow PECO membership in the WSPP to become effective immediately upon the date of this filing. Accordingly, PECO requests waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon the WSPP Executive Committee.

Comment date: March 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–6119 Filed 3–13–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER95–139–001, et al.]

Southern California Edison Company, et al.; Electric Rate and Corporate Regulation Filings

March 7, 1996.

Take notice that the following filings have been made with the Commission:

1. Southern California Edison Company

[Docket No. ER95–139–001]

Take notice that on March 1, 1996, Southern California Edison Company tendered for filing its refund report in the above-referenced docket.

Comment date: March 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Texas-Ohio Power Marketing, Inc., Audit Pro Incorporated, Gateway Energy Inc., Alliance Strategies, IGM, Inc., ConAgra Energy Services, Inc.

[Docket Nos. ER94–1676–006, ER95–878–003, ER95–1049–002, ER95–1381–001, ER95–1439–001, ER95–1751–001 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On February 28, 1996, Texas-Ohio Power Marketing, Inc. filed certain information as required by the Commission's October 31, 1994 order in Docket No. ER94–1676–000.

On February 1, 1996, Audit Pro Incorporated filed certain information as required by the Commission's June 2, 1995 order in Docket No. ER95–878–000.

On February 23, 1996, Gateway Energy Inc. filed certain information as required by the Commission's August 4, 1995 order in Docket No. ER95–1049–000.

On February 26, 1996, Alliance Strategies filed certain information as required by the Commission's August 25, 1995 order in Docket No. ER95–1381–000.

On February 16, 1996, IGM, Inc. filed certain information as required by the Commission's August 28, 1995 order in Docket No. ER95–1439–000.

On February 23, 1996, ConAgra Energy Services, Inc. filed certain information as required by the Commission's October 23, 1995 order in Docket No. ER95–1751–000.

3. Public Serivce Company of Oklahoma; Southwestern Electric Power Company

[Docket No. ER96–1182–000]

Take notice that on February 27, 1996, Public Service Company of Oklahoma (PSO) and Southwestern Electric Power Company (SWEPCO) (jointly, the Companies) submitted two Transmission Service Agreements dated February 7, and February 19, 1996, establishing Destec Power Services, Inc. (Destec) and Entergy Power, Inc. (Entergy), respectively, as customers under the terms of the Companies' SPP Interpool Transmission Service Tariff.

The Companies request waiver of the Commission's notice requirements. Copies of this filing were served upon Destec and Entergy.

Comment date: March 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power Corporation

[Docket No. ER96–1183–000]

Take notice that on February 27, 1996, Florida Power Corporation (FPC) tendered for filing Amendment No. 1 to its contract for interchange service between itself and City of Tallahassee (Tallahassee). The amendment provides for the addition of the service schedule to the contract. FPC requests Commission waiver of the 60-day notice requirement in order to allow the amendment to become effective on February 28, 1996. Waiver is appropriate because this filing does not change the rate under this commission accepted, existing rate schedule.

Comment date: March 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power Corporation

[Docket No. ER96–1184–000]

Take notice that on February 27, 1996, Florida Power Corporation (FPC) tendered for filing Amendment No. 1 to its contract for interchange service between itself and City of Homestead (Homestead). The amendment provides for the addition of the service schedule to the contract.

FPC requests Commission waiver of the 60-day notice requirement in order to allow the amendment to become effective on February 28, 1996. Waiver is appropriate because this filing does not change the rate under this commission accepted, existing rate schedule.

Comment date: March 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power Corporation

[Docket No. ER96–1185–000]

Take notice that on February 27, 1996, Florida Power Corporation (FPC) tendered for filing Amendment No. 1 to its contract for interchange service between itself and City of Vero Beach (Vero Beach). The amendment provides for the addition of the service schedule to the contract.

FPC requests Commission waiver of the 60-day notice requirement in order to allow the amendment to become effective on February 28, 1996. Waiver is appropriate because this filing does not change the rate under this commission accepted, existing rate schedule.

Comment date: March 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Florida Power Corporation

[Docket No. ER96–1186–000]

Take notice that on February 27, 1996, Florida Power Corporation (FPC) tendered for filing Amendment No. 1 to its contract for interchange service between itself and Utilities Commission, City of New Smyrna Beach (Commission). The amendment provides for the addition of the service schedule to the contract.

FPC requests Commission waiver of the 60-day notice requirement in order to allow the amendment to become effective on February 28, 1996. Waiver is appropriate because this filing does not change the rate under this commission accepted, existing rate schedule.

Comment date: March 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Florida Power Corporation

[Docket No. ER96–1187–000]

Take notice that on February 27, 1996, Florida Power Corporation (FPC) tendered for filing Amendment No. 1 to its contract for interchange service between itself and Gainesville Regional Utilities (Gainesville). The amendment provides for the addition of the service schedule to the contract.

FPC requests Commission waiver of the 60-day notice requirement in order to allow the amendment to become effective on February 28, 1996. Waiver is appropriate because this filing does not change the rate under this commission accepted, existing rate schedule.

Comment date: March 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power Corporation

[Docket No. ER96–1188–000]

Take notice that on February 27, 1996, Florida Power Corporation (FPC) tendered for filing Amendment No. 1 to its contract for interchange service between itself and City of Lake Worth (Lake Worth). The amendment provides for the addition of the service schedule to the contract.

FPC requests Commission waiver of the 60-day notice requirement in order to allow the amendment to become effective on February 28, 1996. Waiver is appropriate because this filing does not change the rate under this commission accepted, existing rate schedule.

Comment date: March 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power Corporation

[Docket No. ER96–1189–000]

Take notice that on February 27, 1996, Florida Power Corporation (FPC) tendered for filing service agreements providing for service to Delhi energy Services, Inc. pursuant to its open access transmission tariff (the T–2 Tariff). Florida Power requests that the Commission waive its notice of filing requirements and allow the agreements to become effective February 28, 1996.

Comment date: March 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Florida Power Corporation

[Docket No. ER96–1190–000]

Take notice that on February 27, 1996, Florida Power Corporation (FPC) tendered for filing a contract for the provision of interchange service between itself and Delhi Energy Services Inc. The contract provides for service under Schedule J, Negotiated Interchange Service and OS, Opportunity Sales. Cost support for both schedules has been previously filed and approved by the Commission. No specifically assignable facilities have been or will be installed or modified in order to supply service under the proposed rates.

FPC requests Commission waiver of the 60-day notice requirement in order to allow the contract to become effective as a rate schedule February 28, 1996. Waiver is appropriate because this filing does not change the rate under these two Commission accepted, existing rate schedules.

Comment date: March 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER96–1191–000]

Take notice that on February 27, 1996, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the ''GPU Operating Companies'') filed an executed Service Agreement between GPU and Global Petroleum Corporation (GPC), dated February 6, 1996. This Service Agreement specifies that GPC has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (''Sales Tariff'') designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and GPC to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of February 6, 1996 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: March 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Nevada Power Company

[Docket No. ER96–1193–000]

Take notice that on February 27, 1996, Nevada Power Company (Nevada Power) tendered for filing a proposed Supplement to the Non-Firm Energy Agreement between Nevada Power Company and the Colorado River Commission (CRC) (Schedule A) having a proposed effective date of May 1, 1996.

The Supplemental Agreement provides for the sale of economy energy to CRC during any calendar month in which CRC agrees to purchase from Nevada Power all of its economy energy requirements. Such economy energy is to be delivered using CRC's contractual allocation of Federal Colorado River hydroelectric capacity. The total monthly amount of economy energy under Schedule A shall not exceed the amount of energy that, when added to CRC's contractual allocation of Federal hydroelectric energy, would provide 100 percent capacity factor utilization of these Federal hydroelectric resources.

The price of economy energy sold by Nevada Power and purchased by CRC pursuant to Schedule A shall be at Nevada Power's Average Hourly Marginal Cost of energy for each calendar month plus 1 mill per kilowatt-hour. Average Hourly Marginal Cost is defined as the monthly sum of the hourly incremental cost of the next cheapest megawatt-hour available to generate or purchase (excluding generation at Hoover Dam) to meet load in Nevada Power's control area divided by the number of hours in the month.

Copies of this filing have been served on CRC and the Nevada Public Service Commission.

Comment date: March 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Public Service Electric and Gas Company

[Docket No. ER96–1194–000]

Take notice that on February 27, 1996, Public Service Electric and Gas Company (PSE&G) tendered for filing an initial rate schedule to provide fully interruptible transmission service to Louis Dreyfus Electric Power Inc., for delivery of non-firm wholesale electrical power and associated energy output utilizing the PSE&G bulk power transmission system.

Comment date: March 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. ANP Energy Direct Company

[Docket No. ER96–1195–000]

Take notice that on February 27, 1996, ANP Energy Direct Company (ANP) tendered for filing a petition seeking waivers and blanket approvals under various regulations of the Commission, and an order accepting its FERC Electric Rate Schedule No. 1, to be effective on the date of the Commission's order on such petition.

ANP intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where ANP purchases power, including capacity and related services from electric utilities, qualifying facilities, and independent power producers, and resells such power to other purchasers, ANP will be functioning as a marketer. In ANP's marketing transactions, ANP proposes to charge rates mutually agreed upon by the parties. In transactions where ANP does not take title to the electric power and/or energy, ANP's role will be limited to that of a broker. ANP is not in the business of generating or transmitting electric power, and does not currently have or contemplate acquiring title to any electric power generation or transmission facilities.

FERC Electric Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices. Rate Schedule No. 1 also provides that no sales may be made to affiliates.

Comment date: March 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Cherokee County Cogeneration Partners, L.P.

[Docket No. QF94–160–001]

On February 16, 1996, Cherokee County Cogeneration Partners, L.P. (Applicant), 30 Rockefeller Plaza, 38th Floor, New York, New York 10112, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility will be located near the town of Gaffney in Cherokee County, South Carolina, and will consist of one combustion turbine generator, one unfired heat recovery boiler, and an extraction/condensing steam turbine generator. Steam recovered from the facility will be used in an ammonia refrigerant plant. Refrigerant will be used in an ice production plant and liquified natural gas production plant. The power output of the facility will be sold to Duke Power Company. The primary energy source will be natural gas. The maximum net electric power production capacity of the facility will be approximately 98.5 MW. Construction of the facility was scheduled to begin in February, 1996.

Comment date: Thirty days after the date of publication of this notice in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–6118 Filed 3–13–96; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 6842–060 Washington]

Cities of Aberdeen and Tacoma, Washington; Notice of Availability of Environmental Assessment

March 8, 1996.

An environmental assessment (EA) is available for public review. The EA evaluates an application to amend the Wynoochee Hydroelectric Project. The project's description is being amended to include the Wynoochee Dam and Reservoir, a higher installed capacity, a revised transmission line, and other changes. The EA finds that approving the application would not constitute a major federal action significantly affecting the quality of the human environment. The Wynoochee Hydroelectric Project is located on the Wynoochee River, in Grays Harbor County, Washington.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be viewed at the Commission's Reference and Information Center Room 2A, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–6063 Filed 3–13–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–201–000]

Algonquin Gas Transmission Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Middletown Lateral Project and Request for Comments on Environmental Issues

March 8, 1996.

The staff of the Federal Energy Regulatory Commission (FERC or the Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the Middletown Lateral Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is required and whether or not to approve the project.

Summary of the Proposed Project

Algonquin Gas Transmission Company (Algonquin) wants Commission authorization to construct and operate natural gas pipeline and related facilities to deliver up to 82,500

[1] Algonquin Gas Transmission Company's application was filed with the Commission under section 7 of the Natural Gas Act.

million British thermal units of gas per day to The Connecticut Light and Power Company (CL&P). CL&P intends to use the gas as an alternate fuel for Unit Nos. 2 and 3 at its electric generating station in Middletown, Middlesex County, Connecticut (Middletown Plant). The Middletown Lateral would extend from Algonquin's existing mainline system in Glastonbury, Hartford County, Connecticut to the Middletown Plant.

Algonquin seeks authority to construct and operate:

- 8.4 miles of 20-inch-diameter pipeline;
- a meter station; and
- a tap valve site and appurtenant facilities.

CL&P would construct nonjurisdictional facilities consisting of approximately 1,500 feet of piping, a regulator station, and burner conversion equipment. All of CL&P's facilities would be constructed within its plant site.

The general location of the project facilities and specific locations for facilities on new sites are shown in appendix 1.[2]

Land Reqirements for Construction

The project would require about 72 acres of land of which 47.9 acres would be new permanent right-of-way (ROW). The proposed pipeline would be built on or adjacent to existing electric transmission line or abandoned railroad ROWs for about 84 percent of its length. The construction ROW would typically be 75 feet wide consisting of a 50-foot-wide permanent ROW and a 25-foot-wide temporary ROW. Following construction, the disturbed area would be restored and the 25 feet of temporary ROW would be allowed to revert to its former land use. The project would require horizontal directional drilling of the Connecticut River for about 2,100 feet.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are taken into account during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils
- water resources, fisheries, and wetlands
- vegetation and wildlife
- land use
- cultural resources
- hazardous waste
- endangered and threatened species
- public safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's officials service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Algonquin. Keep in mind that this is a preliminary list:

- The Meshomasic State Forest would be crossed.
- Three streams would be crossed that are coldwater fisheries and support trout.
- Twenty-three wetlands would be crossed totalling about 4,495 feet.
- Federally and state-listed threatened or endangered species may be affected.
- The project may impact cultural resources.

The list of issues may be added to, subtracted from, or changed based on your comments and our analysis.

Also, we have made a preliminary decision to not address the impacts of the nonjurisdictional facilities. We will briefly describe their location and status in the EA.

Public Participation

You can made a difference by sending a letter with your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specified your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Washington, D.C. 20426;
- Reference Docket No. CP96–201–000;
- Send a *copy* of your letter to: Mr. John Wisniewski, EA Project Manager, Federal Energy Regulatory Commission, 888 First St., N.E., PR–11.2, Washington, D.C. 20426; and
- Mail your comments so that they will be received in Washington, D.C. on or before April 15, 1996.

If you wish to receive a copy of the EA, you should request one from Mr. Wisniewski at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the preceeding or become an ''intervenor''. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want be become an intervenor you must file a Motion to Intervene according to Rule 214 of their Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Mr. John Wisniewski, EA Project Manager, at (202) 208–1073.

Lois D. Cashell,

Secretary.

[FR Doc. 96–6061 Filed 3–13–96; 8:45 am]

BILLING CODE 6717–01–M

[2] The appendices referenced in this notice are not being printed in the Federal Register Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

[Projects Nos. 2404–017 & 2419–007—Michigan]

Thunder Bay Power Company; Notice of Intention To Hold a Public Meeting for Discussion of the Draft Environmental Impact Statement for the Thunder Bay and Hillman Dam Hydro Projects

March 8, 1996.

On February 7, 1996, the Commission staff mailed the Thunder Bay River Basin Draft Environmental Impact Statement (DEIS) to the Environmental Protection Agency, resource and land management agencies, and interested organizations and individuals.

The DEIS was noticed in the Federal Register on February 16, 1996 (61 FR 6243), and comments are due April 16, 1996. The DEIS evaluates the environmental consequences of continuing to operate and maintain the existing Thunder Bay River Projects in Michigan. It also evaluates the environmental effects of implementing the applicant's proposals, agency and NGO recommendations, staff's recommendations, dam removal, and the no-action alternative.

A public meeting, which will be recorded by an official stenographer, is scheduled on Wednesday, March 27, 1996, from 2:30 p.m. to 5:00 p.m. at Alpena Community College, NRC Room 150, 666 Johnson Street, Alpena, MI 49707.

At this meeting, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the DEIS for the Commission's public record.

For further information, please contact Patrick Murphy, FERC, at (202) 219–2659, Federal Energy Regulatory Commission, Office of Hydropower Licensing, 888 First Street, NE, Washington, DC, 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–6060 Filed 3–13–96; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2009, et al.]

Hydroelectric Applications [Virginia Electric and Power Company, et al.]; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of filing:* Notice of Intent to File Application for New License.

b. *Project No.:* 2009.

c. *Date filed:* August 16, 1995.

d. *Submitted By:* Virginia Electric and Power Company, current licensee.

e. *Name of Project:* Roanoke Rapids and Gaston.

f. *Location:* On the Roanoke River, in the City of Roanoke Rapids, Halifax, Northampton, and Warren Counties, North Carolina, Brunswick and Mecklenburg Counties, Virginia.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. *Effective date of original license:* January 1, 1951.

i. *Expiration date of original license:* December 31, 2000.

j. *The project consists of two developments:*

(1) the Roanoke Rapids Development comprising: (a) a concrete gravity-type dam with a powerhouse intake section, a gated spillway section, an overflow spillway section, two non-overflow sections, and a 24-inch-diameter water supply outlet pipe; (b) a submerged weir; (c) a reservoir having a 4,600 acre surface area at normal pool elevation 132.0 feet m.s.l.; (d) an integral powerhouse containing four 25,000-kW generating units; (e) an excavated tailrace; (f) step-up transformers; (g) two 1.6-mile-long, 110-kV transmission lines; and (h) appurtenant facilities;

(2) the Gaston Development comprising: (a) a concrete gravity-type dam with a powerhouse intake section, a gated spillway section, and a non-overflow section flanked by compacted earth-fill sections; (b) a submerged weir; (c) a 34.0-mile-long reservoir having a 20,300 acre surface area at normal pool elevation 200.0 feet m.s.l.; (d) an integral powerhouse containing four 44,500-kW generating units; (e) step-up transformers; (f) the 230-kV Thelma substation; and (g) appurtenant facilities.

The project has a total installed capacity of 278,000-kW.

k. Pursuant to 18 CFR 16.7, information on the project is available at: Roanoke Rapids Power Station, North End of Oakwood Ave., Roanoke Rapids, North Carolina 27870, (919) 535–6172.

l. *FERC contact:* Charles T. Raabe (202) 219–2811.

m. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1998.

2 a. *Type of filing:* Notice of Intent to File An Application for a New License.

b. *Project No.:* 2651.

c. *Date filed:* May 23, 1995.

d. *Submitted by:* Indiana Michigan Power Company, current licensee.

e. *Name of Project:* Elkhart.

f. *Location:* On the Saint Joseph River, in the City of Elkhart, Elkhart County, Indiana.

g. *Filed Pursuant to:* 18 CFR 16.6 of the Commission's Regulations.

h. *Effective date of original license:* April 1, 1962.

i. *Expiration date of original license:* May 31, 2000.

j. *The project consists of:* (1) an 18-foot-high, 309-foot-long reinforced-concrete gravity-type dam having a spillway section with eleven 25-foot-wide by 10.5-foot-high tainter gates; (2) a 7.5-mile-long reservoir having a 661 acre surface area at normal pool elevation 742.2 feet NGVD; (3) an intake structure; (4) a powerhouse containing three generating units with a total installed capacity of 3,440-kw; (5) a tailrace; (6) a fish ladder; (7) generator leads and bus to a transformer yard and transmission line; and (8) appurtenant facilities.

k. Pursuant to 18 CFR 16.7, information on the project is available at: Indiana Michigan Power Company, 13840 East Jefferson Road, Mishawaka, Indiana 46545, (219) 255–8946.

l. *FERC Contact:* Charles T. Raabe (202) 219–2811.

m. Pursuant to 18 CFR 16.8, 16.9, and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by May 31, 1998.

3 a. *Type of Application:* Surrender of Exemption.

b. *Project No:* 8734–001.

c. *Date Filed:* February 2, 1996.

d. *Applicant:* Palmdale Water District.

e. *Name of Project:* Palmdale Energy Recovery Facility.

f. *Location:* California Aqueduct, LA County.

g. *Filed Pursuant to:* Federal Power Act, 16 USC Section 791(a)–825(r).

h. *Applicant Contact:* Hal Fones, Palmdale Water District, 2005 E Avenue, Q, Palmdale, CA 93550, (213) 947–4111.

i. *FERC Contact:* Hillary Berlin, (202) 219–0038.

j. *Comment Date:* April 15, 1996.

k. *Description of Application:* Palmdale Water District is requesting to surrender its exemption due to economic reasons.

l. Notice consists of paragraphs B, C1, and D2.

4 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11573–000.
c. *Date filed:* February 13, 1996.
d. *Applicant:* Hydro Resources, Inc.
e. *Name of Project:* Royal Mill Hydro Project.
f. *Location:* On the South Branch of the Pawtuxet River, near the city of West Warwick, in Kent County, Rhode Island.
g. *Filed Pursuant to:* Federal Power Act 16 USC §§ 791(a)–825(r).
h. *Applicant Contact:* Mr. Freeman Deware, 1 Main Street, Hope, RI 02831, (401) 828–0804.
i. *FERC Contact:* Edward Lee at (202) 219–2809.
j. *Comment Date: May 8, 1996.*
k. *Description of Project:* The proposed project would consist of: (1) The existing Saybrooke Manufacturing Company's 16- foot-high dam; (2) an existing 60 acre-foot reservoir; and (3) a powerhouse containing two generating units with a combined capacity of 600 Kw with an average annual generation of 1,665,000 Kwh.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $54,000. The existing dam and site works are owned by Sol Barish DBA Saybrooke Manufacturing Company, West Warwick, RI 02893.
l. *Purpose of Project:* Project power would be sold to a local utility.
m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

5 a. *Type of Application:* Request to amend the 1992 Recreation Action Plan Update.
b. *Project No.:* 2149–054.
c. *Dated Filed:* November 13, 1995.
d. *Applicant:* Public Utility District No. 1 of Douglas County (licensee).
e. *Name of Project:* Wells Project.
f. *Location:* Confluence of the Okanogan and Columbia Rivers, near the town of Brewster, Okanogan County, Washington.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).
h. *Applicant Contact:* Robert Clubb, Ph.D., Chief of Environmental and Regulatory Services, Public Utility District No. 1 of Douglas County, 1151 Valley Mall Parkway, East Wenatchee, WA 98802–4497, (509) 884–7191.
i. *FERC Contact:* Joseph C. Adamson, (202) 219–1040.
j. *Comment Date:* April 22, 1996.
k. *Description of Proposed Action:* The licensee filed, for Commission approval, a request to delete the improvements to the Fort Okanogan Overlook from the 1992 Recreation Action Plan Update (1992–Update). The 1992–Update was approved by Order Approving Recreation Action Plan Update, 66 FERC ¶ 62,170 (1994). The Fort Okanogan Overlook views the original site of Fort Okanogan and Columbia River. Approved site development consists of paving the access road and parking area, and providing picnic tables and an interpretive sign.
l. This notice also consists of the following standard paragraphs: B, C1, and D2.

6 a. *Type of Application:* Petition for Declaratory Order.
b. *Docket No:* DI96–4–000.
c. *Date Filed:* February 12, 1996.
d. *Applicant:* Wisconsin Power & Light Company.
e. *Name of Project:* Shawano Project.
f. *Location:* On the Wolf River, in Shawano County, Wisconsin, near the City of Shawano.
g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. §§ 817(b).
h. *Applicant Contact:* Mari E. Nahn, Assistant General Counsel, Wisconsin Power & Light, 222 West Washington Ave., Madison, WI 53701–0192, (608) 252–3318.
i. *FERC Contact:* Diane M. Murray, (202) 219–2682.
j. *Comment Date:* April 19, 1996.
k. *Description of Project:* The project consists of: (1) a reservoir with a surface area of approximately 195 acres; (2) a reinforced concrete dam about 150 feet long and 195 feet high with two earthen embankments and a concrete spillway section with six steel tainter gates, 14 feet by 14 feet; (3) a powerhouse containing a generator with a capacity of 640 kilowatts; and (4) appurtenant facilities.

When a Petition for Declaratory Order is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.
l. *Purpose of Project:* The entire power output of the project is distributed to residential, commercial, industrial, and rural customers in the Wisconsin area served by the Wisconsin Power & Light Company.
m. This notice also consists of the following standard paragraphs: B, C1, and D2.

7 a. *Type of filing:* Notice of Intent to File an Application for a New License.
b. *Project No.:* 2618.
c. *Date filed:* August 21, 1995.
d. *Submitted By:* Georgia-Pacific Corporation, current licensee.
e. *Name of Project:* West Branch.
f. *Location:* On the West Branch of the St. Croix River and on Grand Lake Stream, in Hancock, Penobscot, and Washington Counties, Maine.
g. *Filed Pursuant to:* 18 CFR 16.6 of the Commission's regulations.
h. *Effective date of original license:* April 1, 1962.
i. *Expiration date of original license:* September 30, 2000.
j. *The project consists of two developments:*

(1) the West Grand Development comprising: (a) the 485-foot-long West Grand Lake Dam having a 211-foot-long eastern embankment section, a 106-foot-long center section with crest elevation 304.33 feet m.s.l. containing five hand-operated wooden 9.8-foot-wide, 9-foot-high gates and an upstream fish passage facility, and a 168-foot-long western embankment section; (b) the 505-foot-long, 15-foot-high Farm Cove Dam having a 390-foot-long southern embankment section, a 10-foot by 30-foot submerged orifice fish passage facility, and a 105-foot-long northern embankment section; (c) a reservoir having a 24,300 acre surface area at normal pool elevation 301.4 feet m.s.l.; and (d) appurtenant facilities;

(2) the Sysladobsis Development comprising: (a) a 250-foot-long dam having a 124-foot-long western embankment section, a 23.1-foot-long rock-filled timber crib gate section containing two hand-operated 9.7-foot-wide, 6.0-foot-high wooden gates, a 66-foot-long earthern dike section, a 7-foot-wide fishway section consisting of six 7-foot-long, 7-foot-deep pools, and a 30-foot-long eastern embankment section; (b) a reservoir having a 5,400 acre surface area at normal pool elevation 305.62 feet m.s.l.; and (c) appurtenant facilities.

The project has no installed generating capacity.
k. Pursuant to 18 CFR 16.7, information on the project is available at: Woodland Mill, Main Street, Woodland, Maine 04694, (207) 427–3311.
l. *FERC contact:* Charles T. Raabe (202) 219–2811.

m. Pursuant to 18 CFR 16.11 and 16.19 each application for a new or subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by September 30, 1998.

8 a. *Type of Application:* Petition for Declaratory Order.

b. *Project No.:* DI96–5–000.

c. *Date Filed:* February 20, 1996.

d. *Applicant:* Rochester Gas and Electric Corporation.

e. *Name of Project:* Station 160 Hydroelectric Project.

f. *Location:* Genesee River,in the Towns of Leicester and Mount Morris, Livingston County, New York.

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. § 817(b).

h. *Applicant Contact:* Hal F. Waggoner, Licensing Coordinator Rochester Gas and Electric Corporation, 89 East Avenue, Rochester, NY 14649–0001, (716) 546–2700.

i. *FERC Contact:* Etta Foster, (202) 219–2679.

j. *Comment Date:* April 22, 1996.

k. *Description of Project:* The existing project consists of: (1) a dam 334-feet-long and varying in height from 30 feet at the south end to 20 feet at the north end; (2) a powerhouse containing a generating unit with a rated generating capacity of 340 kilowatts; (3) an underground transmission line; and (4) appurtenant facilities.

When a petition for Declaratory Order is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Purpose of Project:* Applicant supplies power to its customers within its service area.

m. This notice also consists of the following standard paragraphs: B, C1, and D2.

9a. *Type of Application:* Conduit Exemption (Tendering Notice).

b. *Project No.:* 11572–000.

c. *Date Filed:* February 8, 1996.

d. *Applicant:* Roosevelt Water Conservation District.

e. *Name of Project:* RWCD Conduit.

f. *Location:* On the RWCD irrigation conduit, near Mesa City, in Maricopa County, Arizona.

g. *Filed Pursuant to:* Federal Power Act 16 USC §§ 791(a)—825(r)

h. *Applicant Contact:* Mr. Michael O. Leonard, General Manager, Roosevelt Water Conservation District, P.O. Box 100, Higley, AZ 85235.

i. *FERC Contact:* Michael Spencer at (202) 219–2846.

j. *Description of Project:* The proposed project would consist of: (1) a bifurcation attached to the applicant's existing irrigation conduit; (2) a 100-foot-long, 42-inch-diameter penstock; (3) a powerhouse containing one generating unit with a capacity of 860 kW and an average annual generation of 6,885 MWh.

k. With this notice, we are initiating consultation with the *State Historic Preservation Officer (SHPO),* as required by section 106, National Historic Preservation Act, and the regulations of the Advisory council on Historic Preservation, 36 CFR, at section 800.4.

l. Under Section 4.32 (b)(7) of the Commission's regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the date of the filing of the application, and must serve a copy of the request on the applicant.

10a. *Type of Application:* Amendment of License Term.

b. *Project No:* 2131–007.

c. *Date Filed:* February 21, 1996.

d. *Applicant:* Wisconsin Electric Power Company.

e. *Name of Project:* Kingsford Project.

f. *Location:* Menominee River, Dickinson County, Michigan and Florence County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 USC Section 791(a)–825(e).

h. *Applicant Contact:* Rita Hayen, Wisconsin Electric Power Company, 231 W. Michigan, P.O. Box 2046, Milwaukee, WI 53201, (414) 221–2413.

i. *FERC Contact:* Hillary Berlin, (202) 219–0038.

j. *Comment Date:* April 23, 1996.

k. *Description of Amendment Request:* The licensee proposes that the license term be accelerated from June 30, 2004, to October 31, 2001, in order to facilitate a coordinated relicensing review of six other projects in the Menominee River Basin.

1. The notice also consists of the following standard paragraphs: B, C1, and D2.

11 a. *Type of Application:* Surrender of License.

b. *Project No.:* 6310–019.

c. *Date Filed:* February 5, 1996.

d. *Applicant:* Gull Industries, Inc.

e. *Name of Project:* Barclay Creek.

f. *Location:* Barclay Creek, Snohomish County, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 USC Section 791(a)–825(r).

h. *Applicant Contact:* Jeff T. Scott, Vice President, Gull Industries, Inc., P.O. Box 24687, Seattle, WA 98124, (206) 624–5900.

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Comment Date:* April 23, 1996.

k. *Description of Application:* The licensee seeks to surrender the license for this unconstructed project because it is economically infeasible to develop the project.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

12 a. *Type of Application:* Major Unconstructed Project.

b. *Project No.:* 11393–000.

c. *Applicant:* City of Saxman, Alaska.

d. *Name of Project:* Mahoney Lake Hydroelectric Project.

e. *Location:* Partially within the Tongass National Forest, on Upper Mahoney Lake, northeast of the city of Ketchikan, Alaska.

f. *Applicant Contact:* Mr. Doug Campbell, Cape Fox Corporation, P.O. Box 8558, Ketchikan, Alaska 99901, (907) 225–5163

Send Comments to: Mr. Michael V. Stimac, HDR Engineering, Inc., 500–108th Avenue, NE, Suite 1200, Bellevue, WA 98004–5538, (206) 453–1523.

g. *FERC Contact:* Vince Yearick (202) 219–3073.

h. Saxman mailed a copy of the PDEA and Draft License Application to interested parties on March 1, 1996. The Commission received a copy of the PDEA and Draft License Application on March 4, 1996.

i. As discussed in the Commission's February 13, 1995 letter to all parties, with this notice we are soliciting preliminary terms, conditions, and recommendations on the PDEA and comments on the draft license application.

j. Saxman intends to seek benefits under § 210 of the Public Utility

Regulatory Policy Act of 1978 (PURPA), and believes that the project meets the definition under § 292.202(p) of 18 CFR for a new dam or diversion. As such, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the state agency exercising authority over the fish and wildlife resources of the state have mandatory conditioning authority under the procedures provided for at § 30(c) of the Federal Power Act (Act).

k. All comments on the PDEA and draft license application for the Mahoney Lake Project should be sent to the address noted above in item (f) with one copy filed with the Commission at the following address: Federal Energy Regulatory Commission, Office of the Secretary, Dockets—Room 1A, 888 First Street NE., Washington, DC 20426.

All comments must bear the heading ''Preliminary Comments'', ''Preliminary Recommendations'', ''Preliminary Terms and Conditions'', or ''Preliminary Prescriptions''. Any party interested in commenting must do so before May 30, 1996.

1. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

Standard Paragraphs

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: March 7, 1996, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 96–6065 Filed 3–13–96; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE AND TIME: Tuesday, March 19, 1996 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, March 21, 1996 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 1996–1: Roger S. Ballentine on behalf of Association of Trial Lawyers of America (''ATLA'').

Advisory Opinion 1996–6: Randy L. Dryer on behalf of Barrick Goldstrike Mines, Inc.

Regulations: Notice of Proposed Rulemaking on Electronic Filing (11 CFR 104.18).

FY 1997 Budget Justification.

Legislative Recommendations 1996. (continued from meeting of March 7, 1996).

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 96–6301 Filed 3–12–96; 2:24 pm]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Renewal of The National Fire Academy Board of Visitors

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of renewal.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Director of FEMA gives notice of the renewal of the National Fire Academy Board of Visitors (Board) for a period of two years. Renewal of the Board is a matter of the public interest in connection with the performance of duties imposed on the agency by law, to provide independent advice on FEMA plans and programs.

DATES: Renewal of the Board is effective as of January 1, 1996 through December 31, 1997. Comments on renewal of the Board should be submitted on or before May 13, 1996.

ADDRESSES: Please send any comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (facsimile) (202) 646–4536.

SUPPLEMENTARY INFORMATION: Acting under the Federal Advisory Committee Act , 5 U.S.C. App. 1, and Reorganization Plan No. 3 of 1978, the Director has determined that renewal of the National Fire Academy Board of Visitors is a matter of the public interest in connection with the performance of duties imposed on the agency by law.

The Board shall review annually the program of the National Fire Academy and make comments and recommendations to the Director, through the U.S. Fire Administrator, regarding the operation of the Academy and any improvements therein that the Board deems appropriate. The Board shall make interim comments and recommendations to the Director whenever there is an indicated urgency to do so in fulfilling its duties.

The Board shall include in its review: an examination of Academy programs to determine whether these programs further the basic mission of the Academy; an examination of the organization of the Academy to determine whether it affords the most appropriate structure for delivering the Academy programs; an examination of the physical plant of the Academy to determine the adequacy of the facilities; and an examination of the funding levels for the Academy programs.

The Director shall select the members of the Board from the nominations of qualified persons submitted by the U.S. Fire Administrator. The Board shall be selected from among professionals in the fields of fire safety, fire prevention, fire control, research and development in fire protection, treatment and rehabilitation of fire victims, or local government services management, and from such professional organizations as will ensure a balanced representation of interest.

To ensure that the Board is objective and not influenced by special interests, members are required to file an annual Statement of Financial Interests and Affiliations and a Conflict of Interest Agreement. The members serve at the discretion of the Director with two-year renewable terms.

Dated: March 8, 1996.

Harvey G. Ryland,

Deputy Director.

[FR Doc. 96–6087 Filed 3–13–96; 8:45 am]

BILLING CODE 6718–08–P

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 C.F.R. Part 540, as amended: Carnival Corporation, Carnival Place, 3655 N.W. 87th Avenue, Miami, Florida 33178–2428.

Vessels: HOLIDAY and INSPIRATION

Dated: March 8, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–6070 Filed 3–13–96; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 C.F.R. Part 540, as amended: Dolphin Cruise Line, Inc. and Ulysses Cruises, Inc., 901 South America Way, Miami, Florida 33132.

Vessel: ISLANDBREEZE

Dated: March 8, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–6069 Filed 3–13–96; 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 applicants 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 410).

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.

Orca Int'l Freight Forwarders Inc., 6993 N.W. 50 Street, Miami, FL 33166, Officers: Marlene Rodriguez, President; Paul Rodriguez, Vice President

EM Global Shipping Enterprises, 4350 Town Plaza, Suite 200, Houston, TX 77045, Bassey Morgan Etukudo, Sole Proprietor

A 2 Z International Trading Inc. d/b/a, A 2 Z Auto Sales, 2920 West Airport Boulevard, Sanford, FL 32771, Nema Moussa and Ali Alawadhi, Partnership

V.R. Camelot Inc., 1961 Obispo Avenue, Long Beach, CA 90804, Officer: Victor Roy Stringer, President.

Dated: March 8, 1996.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 96–6035 Filed 3–13–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 8, 1996.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Robert S. Locke, and Bruce R. Plankinton, both of Junction City, Kansas; acting in concert to acquire an additional 16.81 percent, for a total of 34.75 percent, of the voting shares, and 20.17 percent, for a total of 48.35 percent, of the voting shares, respectively, of Community Bank of Kansas, Inc., Prairie Village, Kansas, and thereby indirectly acquire Community Bank, Chapman, Kansas, and First State Bank, Junction City, Kansas.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Marvin Doyce Middlebrook, together with Randall Wade Middlebrook, both of Lubbock, Texas; to acquire an additional 13.42 percent, for a total of 23 percent, of the voting shares, and an additional 6.02 percent, for a total of 7.31 percent, of the voting shares, respectively, of Caprock Bancshares, Inc., Shallowater, Texas, and thereby indirectly acquire First State Bank, Shallowater, Texas.

Board of Governors of the Federal Reserve System, March 8, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96-6080 Filed 3-13-96; 8:45 am]

BILLING CODE 6210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The company listed in this notice has applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. § 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the company listed below.

The application listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. § 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. § 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 8, 1996.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Brazos Bancshares, Inc., Joshua, Texas; to acquire 83.69 percent of the common stock voting shares and 67 percent of the preferred stock voting shares of Heritage Eagle Corporation, Red Oak, Texas, and thereby indirectly acquire Fore Corporation, Wilmington, Delaware, and Heritage Bank, Red Oak, Texas.

Board of Governors of the Federal Reserve System, March 8, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96-6078 Filed 3-13-96; 8:45 am]

BILLING CODE 6210-01-F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. § 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to commence or to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. § 1843). Any request for a hearing on this question must be

accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 28, 1996.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. BNCCORP, Inc., Bismarck, North Dakota; to acquire Cambridge Bank Professionals, LLC, St. Cloud, Minnesota, through a newly formed subsidiary, BNC Financial Corporation, St. Cloud, Minnesota, and thereby engage in commercial finance activities pursuant to § 225.25(b)(1)(iv) of the Board's Regulation Y; and in management consulting pursuant to § 225.25(b)(11) of the Board's Regulation Y, including consulting with respect to credit process review/loan review, pre-funding loan due diligence and underwriting, collateral reviews, problem loan consulting, expert witness/litigation support, bankruptcy support, valuation services, compliance process design and review, special investigations, bank buy-sell due diligence, and CAMEL assessments. These activities will take place in Minnesota, North Dakota, South Dakota, Iowa, and Wisconsin.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to engage *de novo* through a joint venture, Mortgage Professionals, West Des Moines, Iowa, in residential mortgage lending business pursuant to § 225.25(b)(1) of the Board's Regulation Y. The co-venturers will be Norwest Ventures, Inc., and Mid-America Mortgage Co., West Des Moines, Iowa.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Woodforest Bancshares, Inc., Houston, Texas; to acquire Mutual Money Investments, Inc. (d.b.a Tri-Star Financial), Houston, Texas, and thereby engage in underwriting and dealing in government obligations and money market instuments pursuant to § 225.25(b)(16) of the Board's Regulation Y.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. InterWest Bancorp, Reno, Nevada; to acquire InterWest Mortgage, Reno, Nevada, and thereby engage in making, acquiring, and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 8, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96-6079 Filed 3-13-96; 8:45 am]

BILLING CODE 6210-01-F

Consumer Advisory Council; Notice of Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, March 28. The meeting, which will be open to public observation, will take place in Terrace Room E of the Martin Building. The meeting is expected to begin at 9:00 a.m. and to continue until 4:00 p.m., with a lunch break from 1:00 p.m. until 2:00 p.m. The Martin Building is located on C Street, Northwest, between 20th and 21st Streets in Washington, D.C.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

Consumer Leasing. Discussion led by the Consumer Credit Committee on the proposed revision of lease disclosures under the Board's Regulation M (Consumer Leasing), focusing on the disclosure of a lease rate, a total lease charge, and an example of an early-termination charge, and choice of format for presenting disclosures to consumers.

Finance Charge Report. Discussion led by the Consumer Credit Committee on an upcoming Board report to Congress on how the finance charge disclosure under the Board's Regulation Z (Truth in Lending) could more accurately reflect the cost of consumer credit, including the feasibility of treating as finance charges all costs imposed by the creditor and payable by the consumer that are incident to an extension of credit.

Community Reinvestment Act Reform. Discussion led by the Bank Regulation Committee on implementation of the revised CRA regulations with a focus on emerging issues, including those among banks and thrift institutions that are subject to new data collection and reporting requirements.

Community Development Lending. Discussion led by the Community Affairs and Housing Committee on creating public-private partnerships to provide opportunities for community development and profitable lending.

Regulatory Coverage for Stored-Value Cards. Discussion led by the Depository and Delivery Systems Committee on an upcoming Board proposal to amend Regulation E (Electronic Fund Transfers) to address the treatment of ''stored value'' cards (including smart cards, prepaid cards, electronic purses, and similar products) and the use of electronic communications in home-banking programs.

Governor's Report. Report by Federal Reserve Board Member Lawrence B. Lindsey on economic conditions, recent Board initiatives, and issues of concern, with an opportunity for questions from Council members.

Members Forum. Presentation of individual Council members' views on the economic conditions present within their industries or local economies.

Committee Reports. Reports from Council committees on their work and plans for 1995.

Other matters previously considered by the Council or initiated by Council members also may be discussed.

Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statements to Deanna Aday-Keller, Secretary, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

Information with regard to this meeting may be obtained from Ms. Aday-Keller, 202-452-6470. Telecommunications Device for the Deaf (TDD) users may contact Dorothea Thompson, 202-452-3544.

Board of Governors of the Federal Reserve System, March 8, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96-6077 Filed 3-13-96; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Collection; Comment Request

Proposed Project(s)

Title: Job Opportunity Basic Skills (JOBS) Participation Rate Quarterly Report.

OMB No.: 0970–0112.

Description: Jobs participants data collection form ACF–108. States are required to report participants characteristics on a monthly basis. The information received from this collection will provide the data base to analyze and evaluate the JOBS program relevant to the degree in which States are assisting participants to achieve self-sufficiency and reduce welfare dependency, and provide ACF with sufficient information to adequately respond to inquiries from Congress and other interested parties.

Respondents: State governments.

ANNUAL BURDEN ESTIMATES

Instrument	No. of respondents	No. of responses per respondent	Average burden hours per response	Total burden hours
ACF–108	54	12	2	1,296
Estimated total annual burden hours: 1,296.				

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 above. 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 SW., Washington, DC 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. Internet messages 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: March 6, 1996.

Roberta Katson,

Director, Division of Information Resource Management Services.

[FR Doc. 96–6088 Filed 3–13–96; 8:45 am]

BILLING CODE 4184–01–M

Agency Information Collection Under OMB Review

Title: Uniform Reporting Requirements for IV–A and IV–F Funded Child Care for Non-JOBS Participants, Tribal JOBS Participants, Transitional Child Care and At-Risk Child Care.

OMB No.: 0970–0115.

Description: The child care information, collected on page 1 and 2 of Form ACF–115, for AFDC–Basic, AFDC–UP, AFDC applicants, and families in transition will be used to ensure that section 402(g)(1)(A) of the Social Security Act is being effectively implemented. The child care information from page 3 for At-Risk families will be used to ensure that section 402(i)(6) of the Social Security Act is being effectively implemented. States are required to report child care data on a quarterly basis.

Respondents: State governments.

ANNUAL BURDEN ESTIMATES

Instrument	No. of respondents	No. of responses per respondent	Average burden hours per response	Total burden hours
ACF–115	54	4	35	7,560
Estimated Total Annual Burden Hours: 7,560.				

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 above. 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, SW., Washington, DC 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. Internet messages 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: March 6, 1996.

Roberta Katson,

Director, Division of Information Resource Management Services.

[FR Doc. 96–6189 Filed 3–13–96; 8:45 am]

BILLING CODE 4184–01–M

Proposed Collection; Comment Request

Proposed Project(s):

Title: Jobs Opportunity Basic Skills (JOBS) Participation Rate Quarterly Report.

OMB No.: 0970–0098.

Description: The information received from this collection will provide ACF the information to determine if each State has met the required JOBS participation rates and adjust the FFP rate accordingly. State must establish that the specified percentage of those required to participate in the JOBS program actually participate. The routine collection of participation rate data also provides ACF with sufficient information to adequately respond to inquires from Congress and other interested parties regarding nationwide JOBS participation rates.

Respondents: State governments

ANNUAL BURDEN ESTIMATES

Instrument	No. of respondents	No. of responses per respondent	Average burden hours per response	Total burden hours
ACF–103	54	4	12	2,592
Estimated Total Annual Burden Hours: 2,592.				

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 above. 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. Internet messages 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: March 6, 1996

Roberta Katson,

Director, Division of Information Resource Management Services.

[FR Doc. 96–6190 Filed 3–13–96; 8:45 am]

BILLING CODE 4194–01–M

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made final findings of scientific misconduct in the following case:

Gail L. Daubert, R.N., Northwestern University: Based on an investigation conducted by its Division of Research Investigations, ORI found that Gail Daubert, R.N., while serving as clinic coordinator for the Collaborative Ocular Melanoma Study (COMS) at Northwestern University, committed scientific misconduct by falsifying clinical trial data. The multicenter COMS involves research on the treatment of choroidal melanoma, a rare form of eye cancer. It is supported by the National Eye Institute. The study is still ongoing, and no results have been published.

ORI found that Ms. Daubert falsified 211 data items, including falsely stating that a radiation oncologist had evaluated patients prior to randomization, falsely reporting laboratory blood test results were normal when they were abnormal, falsely reporting that dates for patient visits or procedures had been performed within the specified protocol window when the actual date was outside the protocol window, and falsely reporting that a COMS certified examiner had performed an evaluation or procedure when a noncertified examiner had performed the task.

Ms. Daubert has entered into a Voluntary Exclusion Agreement with ORI in which she does not admit to any acts of scientific misconduct, but she has agreed to exclude herself voluntarily, for the three (3) year period beginning March 4, 1996, from:

(1) contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in, nonprocurement transactions (e.g., grants and cooperative agreements) of the United States Government, as defined in 45 CFR Part 76 and 48 CFR Subparts 9.4 and 309.4 (Debarment Regulations); and

(2) serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

The above voluntary exclusion, however, shall not apply to Ms. Daubert's future training or practice of clinical medicine as a nurse, unless that practice involves research or research

training, or to Ms. Daubert's participation in or eligibility for any Federal program relating to student loans, education grants, or educational assistance of any type or kind, for which she would otherwise be qualified to receive or be considered to receive (educational assistance), unless that educational assistance involves research or research training.

FOR FURTHER INFORMATION CONTACT: Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852.

Lyle W. Bivens,

Director, Office of Research Integrity.

[FR Doc. 96–6026 Filed 3–13–96; 8:45 am]

BILLING CODE 4160–17–P

Agency for Health Care Policy and Research

Health Care Policy and Research Emphasis Panel; Notice of Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2) announcement is made of the following special emphasis panel scheduled to meet during the month of March 1996:

Name: Health Care Policy and Research Special Emphasis Panel

Date and Time: March 26, 1996, 1:30 p.m.

Place: Agency for Health Care Policy and Research, 2101 E. Jefferson Street, Suite 400, Rockville, MD 20852.

Open March 26, 1996, 1:30 p.m. to 1:45 p.m.

Closed for remainder of meeting.

Purpose: This Panel is charged with conducting review of grant applications for Conference Support.

Agenda: The open session of the meeting on March 26 from 1:30 p.m. to 1:45 p.m. will be devoted to a business meeting covering administrative matters. During the closed session, the committee will be reviewing grant applications for Conference Support. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that this latter session will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members or other relevant information should contact Linda Blankenbaker, Agency for Health Care Policy and Research, Suite 400, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1438.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: March 7, 1996.

Clifton R. Gaus,

Administrator.

[FR Doc. 96–6072 Filed 3–13–96; 8:45 am]

BILLING CODE 4160–90–M

Centers for Disease Control and Prevention

Advisory Committee for Injury Prevention and Control (ACIPC) and the ACIPC Family and Intimate Violence Prevention Subcommittee Meetings: Change of Location

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 61 FR 7110—dated February 26, 1996.

SUMMARY: Notice is given that the meeting location for the Advisory Committee for Injury Prevention and Control (ACIPC) and the ACIPC Family and Intimate Violence Prevention Subcommittee of the Centers for Disease Control and Prevention (CDC) has changed. The meeting times, dates, status, purpose, and matters to be discussed announced in the original notice remain unchanged.

ORIGINAL LOCATION: Wyndham Garden Hotel-Atlanta Buckhead, 3340 Peachtree Road, NE, Atlanta, Georgia 30326.

NEW LOCATION: Crowne Plaze Ravinia, 4355 Ashford-Dunwoody Road, Atlanta, Georgia 30346.

CONTACT PERSON FOR MORE INFORMATION: Mr. Thomas A. Bartenfeld, Acting Executive Secretary, ACIPC, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway, NE, M/S K02, Atlanta, Georgia 30341–3724, telephone 770/488–4230.

Dated: March 8, 1996.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–6068 Filed 3–13–96; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

[Docket No. 96N–0085]

Drug Export; ACEL-IMUNE® Diphtheria-Tetanus Toxoid (Acellular) Pertussis Vaccine Adsorbed

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that American Cyanamid Co., Lederle-Praxis Biologicals Div. has filed an application requesting approval for the export of the human biological product ACEL-IMUNE® Diphtheria-Tetanus Toxoid (Acellular) Pertussis Vaccine Adsorbed to the Federal Republic of Germany.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Cathy E. Conn, Center for Biologics Evaluation and Research (HFM–610), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–2006.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of human biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that American Cyanamid Co., Lederle-Praxis Biologicals Div., 401 North Middletown Rd., Pearl River, NY 10965, has filed an application requesting approval for the export of the human biological product ACEL-IMUNE® Diphtheria-Tetanus Toxoid (Acellular) Pertussis Vaccine Adsorbed to the Federal Republic of Germany. The ACEL-IMUNE® Diphtheria-Tetanus Toxoid (Acellular) Pertussis Vaccine Adsorbed is for immunization against diphtheria, tetanus and pertussis (whooping cough) from 15 months to 6 years of age. The application was received and filed in the Center for Biologics Evaluation and Research on February 23, 1996, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch

(address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 25, 1996, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: February 26, 1996.

James C. Simmons,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 96–6027 Filed 3–13–96; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

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:* Extension of a currently approved collection; *Title of Information Collection:* Home and Community-Based Services Waiver Requests; *Form No.:* HCFA–8003; *Use:* Under a Secretarial waiver, States may offer a wide array of home and community-based services to individuals who would otherwise require institutionalization. States requesting a waiver must provide certain assurances, documentation and cost and utilization estimates which are reviewed, approved and maintained for the purpose of identifying/verifying States' compliance with such statutory and regulatory requirements; *Frequency:* Annually; *Affected Public:* State, local, or tribal government; *Number of Respondents:* 50; *Total Annual Responses:* 140; *Total Annual Hours:* 12,600.

To request copies of the proposed paperwork collection referenced above, e-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: March 6, 1996.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–6045 Filed 3–13–96; 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:* Income and Eligibility Verification System (IEVS) Information Collection Requirements in 42 CFR 435.940–435.965; *Form No.:* HCFA–R–74; *Use:* Section 1137 of the Social Security Act requires Medicaid State agencies and other federally-funded welfare agencies to request income and resource data from certain federal agencies, State wage information collection agencies, and State unemployment compensation agencies through an IEVS. The purpose of the IEVS is to ensure that only eligible individuals receive benefits. Our regulations implementing these requirements are found at 42 CFR 435.940–435.965; *Frequency:* Annually; *Affected Public:* State, local, or tribal government; *Number of Respondents:* 54; *Total Annual Hours:* 131,390.

To request copies of the proposed paperwork collection referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch Attention: Allison Eydt New Executive Office Building, Room 10235 Washington, DC 20503

Dated: March 6, 1996.

Kathleen B. Larson

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–6046 Filed 3–13–96; 8:45 am]

BILLING CODE 4210–03–P

Health Resources and Services Administration

Maternal and Child Health Services; Federal Set-Aside Program; Research and Training Grants

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice of availability of funds.

SUMMARY: The HRSA announces that applications will be accepted for fiscal year (FY) 1996 funds for Maternal and Child Health (MCH) Special Projects of Regional and National Significance (SPRANS) research and training grants. Awards will be made under the program authority of section 502(a) of the Social Security Act, the MCH Federal Set-Aside Program. A revised regulation

implementing the Federal Set-Aside Program (42 CFR part 51a) was published in the July 19, 1994, issue of the Federal Register at 59 FR 36703. Within the HRSA, SPRANS grants are administered by the Maternal and Child Health Bureau (MCHB). MCH research and training grants improve the health status of mothers and children through: development and dissemination of new knowledge; demonstration of new or improved ways of delivering care or otherwise enhancing Title V program capacity to provide or assure provision of appropriate services; and preparation of personnel for leadership in MCH-relevant specialties. Awards are made for grant periods which generally run from 1 up to 5 years in duration. Grants for SPRANS hemophilia programs, genetic services and special MCH improvement projects (MCHIP), which contribute to the health of mothers, children, and children with special health care needs (CSHCN), are being announced in a separate notice.

This program announcement is subject to the appropriation of funds. Applicants are advised that this program announcement is a contingency action being taken to assure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. At this time, given a continuing resolution and the absence of FY 1996 appropriations for the SPRANS program, the amount of available funding for this specific grant program cannot be estimated.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The MCH Block Grant Federal Set-Aside Program addresses issues related to the Healthy People 2000 objectives of improving maternal, infant, child and adolescent health and developing service systems for children with special health care needs. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office Washington, DC 20402–9325 (telephone: (202) 783–3238).

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

ADDRESSES: Grant applications for MCH research and training grants must be obtained from and submitted to: Chief, Grants Management Branch, Office of Operations and Management, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18–12, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1440. Applicants for research projects will use Form PHS 398, approved by the Office of Management and Budget (OMB) under control number 0925–0001. Applicants for training projects will use Form PHS 6025–1, approved by OMB under control number 0915–0060. You must obtain application materials in the mail. Written requests should specify the category or categories of activities for which an application is requested so that the appropriate materials may be provided.

Federal Register notices and application guidance for MCHB programs are available on the World Wide Web via the Internet at address: http://www.os.dhhs.gov/hrsa/mchb. Click on the file name you want to download to your computer. It will be saved as a self-extracting (Macintosh or) Wordperfect 5.1 file. To decompress the file once it is downloaded, type in the file name followed by a <return>. The file will expand to a Wordperfect 5.1 file. If you have difficulty accessing the MCHB Home Page via the Internet and need technical assistance, please contact Linda L. Schneider at 301–443–0767 or ''lschneider@hrsa.ssw.dhhs.gov''.

DATES: Potential applicants are invited to request application packages for the specific program category in which they are interested, and to submit their applications for funding consideration. Deadlines for receipt of applications differ for the several categories of grants. The next deadline for receipt of Research Grant applications is August 1, 1996. (Applications are also accepted each year on March 1, as well.) The deadline for receipt of Continuing Education and Development Grant applications is July 1, 1996.

Applications will be considered to have met the deadline if they are either: (1) Received on or before the deadline date, or (2) postmarked on or before the deadline date and received in time for orderly processing. Applicants should request a legibly dated receipt from a commercial carrier or the U.S. Postal Service, or obtain a legibly dated U.S. Postal Service postmark. Private metered postmarks will not be accepted as proof of timely mailing. Late applications or those sent to an address other than specified in the **ADDRESS** section will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: Requests for technical or programmatic information should be directed to the contact persons identified below for each category covered by this notice. Requests for information concerning business management issues should be directed to: Acting Grants Management Officer (GMO), MCHB, at the address specified in the ADDRESS section.

SUPPLEMENTARY INFORMATION: To facilitate the use of this announcement, information in this section has been organized, as outlined in the Table of Contents below, into a discussion of: Program Background, Special Concerns, Evaluation Protocol, Project Review and Funding, SPRANS Project Grants, Public Comment, Eligible Applicants, and Public Health System Reporting Requirements. In addition, for each research and training funding category or subcategory, information is presented under the following headings:

- Application Deadline.
- Purpose.
- Priorities.
- Special Eligibility Considerations.
- Project Period
- Contact

Table of Contents

1. Program Background and Objectives
2. Special Concerns
3. Project Review and Funding
   3.1. Criteria for Review
   3.2. Funding of Approved Applications
4. Special Projects of Regional and National Significance
   4.1. Research Grants
   4.2. Training Grants: Continuing Education and Development
5. Public Comment
6. Eligible Applicants
7. Public Health System Reporting Requirements
8. Executive Order 12372

1. Program Background and Objectives

Under Section 502 of the Social Security Act, 15 percent of the funds are to be set-aside by the Secretary to support (through grants, contracts, or otherwise) special projects of regional and national significance, including research, and training with respect to maternal and child health and children with special health care needs (including early intervention training and services development). The MCH SPRANS set-aside was established in 1981. Support for projects covered by this announcement will come from the

SPRANS set-aside. Acceptance of applications for FY 1996 funds for MCH research and training grants is being announced separately from other SPRANS grants this year in order to reduce confusion to potential applicants from announcement of grants in very large numbers of SPRANS categories and subcategories. The research and training grants covered in this notice are intended to improve the health status of mothers and children.

Research programs focus on the development of new knowledge for application in health care promotion and prevention efforts directed at pregnant women, women of childbearing age, infants, children, adolescents, and children with special health care needs and their families. Findings are expected to have potential for application in health care delivery programs for mothers and children.

Continuing Education and Development (CED) training includes efforts conducted by an institution of higher learning such as short-term, non-degree programs, courses, workshops, conferences, symposia, institutes, and distance learning strategies; and/or development or enhancement of curricula, guidelines, standards of practice, and educational tools/strategies. Continuing Education and Development focuses on increasing leadership skills of MCH professionals; facilitating timely transfer and application of new information, research findings, and technology related to MCH; and updating and improving the knowledge and skills of health and related professionals in programs serving mothers and children, including children with special health care needs (CSHCN). As a result of the CED, professionals are more adequately prepared to provide comprehensive services and to provide leadership in advancing the field to better serve mothers and children.

2. Special Concerns

In keeping with the goals of advancing the development of human potential, strengthening the Nation's capacity to provide high quality education by broadening participation in MCHB programs of institutions that may have perspectives uniquely reflecting the Nation's cultural and linguistic diversity, and increasing opportunities for all Americans to participate in and benefit from Federal public health programs, a funding priority will be placed on projects from Historically Black Colleges and Universities (HBCU) or Hispanic Serving Institutions (HSI) in all categories and subcategories in this notice for which applications from academic institutions are encouraged. An approved proposal from a HBCU or HSI will receive a 0.5 point favorable adjustment of the priority score in a 5 point range before funding decisions are made.

3. Project Review and Funding

Within the limit of funds determined by the Secretary to be available for the activities described in this announcement, the Secretary will review applications for funds under the specific project categories in Section 4, below, as competing applications and may award Federal funding for projects which will, in her judgment, best promote the purpose of title V of the Social Security Act, with special emphasis on improving service delivery to women and children from culturally distinct populations; best address achievement of Healthy Children 2000 objectives related to maternal, infant, child and adolescent health and service systems for children at risk of chronic and disabling conditions; and otherwise best promote improvements in maternal and child health.

3.1 Criteria for Review

The criteria which follow are used, as pertinent, to review and evaluate applications for awards under all SPRANS grants and cooperative agreement project categories announced in this notice. Further guidance in this regard is supplied in application guidance materials, which may specify other criteria.

—The quality of the project plan or methodology
—The need for the research or training
—The extent to which the project will contribute to the advancement of maternal and child health and/or improvement of the health of children with special health care needs;
—The extent to which the project is responsive to policy concerns applicable to MCH grants and to program objectives, requirements, priorities and/or review criteria for specific project categories, as published in program announcements or guidance materials
—The extent to which the estimated cost to the Government of the project is reasonable, considering the anticipated results
—The extent to which the project personnel are well qualified by training and experience for their roles in the project and the applicant organization has adequate facilities and personnel
—The extent to which, insofar as practicable, the proposed activities, if well executed, are capable of attaining project objectives.
—The strength of the project's plans for evaluation
—The extent to which the project will be integrated with the administration of the MCH Block Grant, State primary care plans, public health, and prevention programs, and other related programs in the respective State(s)
—The extent to which the application is responsive to the special concerns and program priorities specified in this notice

3.2 Funding of Approved Applications

Final funding decisions for SPRANS research and training grants are the responsibility of the Director, MCHB. In considering scores for the ranking of approved applications for funding, preferences may be exercised for groups of applications; for example, new projects may be funded ahead of competing continuations, or vice versa. Within any category of approved projects, the score of an individual project may be favorably adjusted, as noted in the notice or guidance for that category, if the project addresses specific priorities identified in this notice. In addition, special consideration in assigning scores may be given by reviewers to individual applications that address areas identified in this notice as special concerns.

4. Special Projects of Regional and National Significance

Two categories of SPRANS grants are discussed below—Research, and Continuing Education and Development:

4.1. Research Grants

• Application Deadline: August 1, 1996. For Research Grants, approximately one-half of the available funds are allocated annually to each cycle (March 1 and August 1). Applications approved but not funded in one cycle are automatically carried forward to the next.

• Purpose: To encourage research in maternal and child health which has the potential for ready transfer of findings to health care delivery programs. Research grants may be made only to public or nonprofit institutions of higher learning and public or nonprofit private agencies and organizations engaged in research or in maternal and child health or programs for CSHCN.

Special consideration will be given to projects which address the factors and processes that lead to disparities in health status and use of services among

minority and other disadvantaged groups as well as health promoting behaviors, quality outcome measures, and systems integration/reform.

• Project Period: Generally 3 years but may be up to 5 years.

• Contact: For programmatic or technical information, contact Gontran Lamberty, Dr.P.H., telephone: (301) 443–2190.

4.2. Training Grants: Continuing Education and Development

• Application Deadline: July 1, 1996.

• Purpose: To support and strengthen MCH programs and improve MCH systems of care through short term, non-degree related training of health professionals and others providing health and related services for mothers and children—workshops, seminars, institutes, distance learning, etc.—and/or to conduct other related activities that develop or enhance standards, practices, curricula, etc., to improve health care for the MCH population. Continuing Education and Development grants may be made only to public or nonprofit private institutions of higher learning.

• Priorities: Priority for funding in this category will be given to Continuing Education and Development projects in the following areas:

—Emergency Medical Services for Children
—Collaborative Office Rounds (Joint Pediatrics-Child Psychology Continuing Education)
—Core Public Health
—Fetal Alcohol Syndrome Resources

• Project Period: Range from 1 to 3 years.

• Contact: For programmatic or technical information, contact Elizabeth Brannon, M.S., R.D., telephone: (301) 443–2190.

5. Public Comment

The categories, priorities, special considerations and preferences described above are not being proposed for public comment this year. In July 1993, following publication of the Department's Notice of Proposed Rulemaking to revise the MCH special project grant regulations at 42 CFR 51a, the public was invited for a 60-day period to submit comments regarding all aspects of the SPRANS application and review process. In responding to those comments, the Department noted the practical limits on Secretarial discretion in establishing SPRANS categories and priorities owing to the extensive prescription in both the statute and annual Congressional directives.

Comments on this SPRANS notice which members of the public wish to make are welcome at any time and may be submitted to: Director, MCHB, at the address listed in the ADDRESS section. Suggestions will be considered when priorities are developed for the next solicitation.

6. Eligible Applicants

MCH training grants may be made only to public or nonprofit private institutions of higher learning. Research grants may be made only to public or nonprofit private institutions of higher learning and public or nonprofit private agencies and organizations engaged in research in maternal and child health or programs for CSHCN. As noted above, applicants for certain grant categories or subcategories are expected to have additional qualifications.

7. Public Health System Reporting Requirements

This program is subject to the Public Health System Reporting Requirements (approved under OMB No. 0937–0195). Under these requirements, the community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date:

(a) A copy of the face page of the application (PHS–398, for Research; PHS–6025–1, for Training).

(b) A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State and local health agencies.

The project abstract may be used in lieu of the one-page PHSIS, if the applicant is required to submit a PHSIS.

8. Executive Order 12372

The MCH Federal set-aside program has been determined to be a program which is not subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs.

The OMB Catalog of Federal Domestic Assistance number is 93.110.

Dated: March 8, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–6073 Filed 3–13–96; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. FR–4002–N–02]

NOFA for Emergency Shelter Grants Set-Aside for Indian Tribes and Alaskan Native Villages; Extension of Application Deadline

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability; extension of application deadline.

SUMMARY: This notice extends the application deadline for the Fiscal Year (FY) 1996 NOFA for the Emergency Shelter Grants Set-Aside for Indian Tribes and Alaskan Native Villages, published in the Federal Register on March 5, 1996 (61 FR 8824). This notice establishes the application deadline to be April 26, 1996.

FOR FURTHER INFORMATION CONTACT: Applicants may contact the appropriate Office of Native American Programs (ONAPs) for further information. Appendix 2 to the March 5, 1996 NOFA (61 FR 8829) contains a complete list of these offices with their addresses and telephone numbers.

SUPPLEMENTARY INFORMATION: The Fiscal Year (FY) 1996 Notice of Funding Availability (NOFA) for the Emergency Shelter Grants Set-Aside for Indian Tribes and Alaskan Native Villages was published in the Federal Register on March 5, 1996 (61 FR 8824). The NOFA established April 19, 1996 as the application deadline. However, in order to provide potential applicants adequate time to prepare their applications, this notice establishes that the application deadline is extended to April 26, 1996. All other instructions in the FY 1996 NOFA with regard to submitting applications remain in effect.

Accordingly, FR Doc. 96–5081, the NOFA for the Emergency Shelter Grants Set-Aside for Indian Tribes and Alaskan Native Villages, published in the Federal Register on March 5, 1996 (61 FR 8824), is amended as follows:

1. On page 8824, in column 1, the section under the heading **DATES** is amended to read as follows:

DATES: Applications must be received by the appropriate HUD Office of Native American Programs (ONAP) by no later than 3:00 p.m. local time (i.e., the time in the office to which the application is submitted) on April 26, 1996.

2. On page 8825, in column 2, section II.D., under the heading ''Submitting Applications'', is amended to read as follows:

II. Application Process

* * * * *

D. Submitting Applications

The ONAP serving the area in which the applicant's project is located must receive an original application and one copy no later than 3:00 p.m. local time (i.e., the time in the office to which the application is submitted) on the deadline date of April 26, 1996. Applications transmitted by FAX will not be accepted. A determination that an application was received on time will be made solely on receipt of the original application at the appropriate Office of Native American Programs serving the applicant's project.

The deadline is firm as to date and hour. In the interest of fairness to all competing applicants, HUD will treat any application that is received after the deadline as ineligible for consideration. Applicants should take this practice into account and make early submission of their materials to avoid any risk of ineligibility brought about by unanticipated delays or other delivery-related problems.

* * * * *

Dated: March 7, 1996.

Michael B. Janis,

General Deputy, Assistant Secretary for Public and Indian Housing.

[FR Doc. 96–6071 Filed 3–13–96; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Technology Transfer Act of 1986

AGENCY: Geological Survey, Interior.

ACTION: Notice of proposed cooperative research and development agreement (CRADA) negotiations.

SUMMARY: The United States Geological Survey (USGS) is entering into a Cooperative Research and Development Agreement (CRADA) with Advanced Resource International (ARI) of Arlington, VA. The purpose of the CRADA is to compare and evaluate Nationwide natural gas resource assessments and to identify frontier gas resources for short and medium-term needs. Joint studies will be undertaken to identify Lower-48 states gas supplies that will fulfill future gas demand projections; identify technical obstacles which impede development of these gas supplies; and develop efficient and cost effective exploitation technologies through the implementation and facilitation of pertinent research and development. Any other organizations interested in pursuing the possibility of a CRADA for similar kinds of activities should contact the USGS.

ADDRESSES: Inquiries may be addressed to Dr. Thaddeus S. Dyman, Energy Program—Hydrocarbon Section, U.S. Geological Survey, P.O. Box 25046, MS 940, Denver, CO 80225, Telephone 303–236–5730, FAX 303–236–8822, E-mail dyman@usgs.gov.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: March 5, 1996.

P. Patrick Leahy, Chief,

Geologic Division.

[FR Doc. 96–6042 Filed 3–13–96; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Land Management

[OR–056–1220–04; GP6–0086]

Supplement to the Final Lower Deschutes River Management Plan/ Environmental Impact Statement; Prineville District, Deschutes Resource Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice is hereby given that the comment period is open for the Supplement to the Final Lower Deschutes River Management Plan/ Environmental Impact Statement. Comments must be submitted by May 13, 1996.

Public workshops have been scheduled to promote a dialogue among river users, interested individuals and agency personnel on the permitting issue. They are set for: Warm Springs on March 19, Maupin on March 20, and Portland on March 21, 1996.

Formal hearings to take testimony have been set for Madras on April 16, The Dalles on April 17, and Portland on April 18.

In 1988, the Lower Deschutes River was designated a federal Wild and Scenic River. The Lower Deschutes River Management Plan, a joint effort completed in 1993, made the decision to limit boater numbers. The plan used the 161,200 boater days during the primary boating season in 1990 as the base year for a cap on seasonal use for each segment of the river between Pelton Dam and the Columbia River. The plan also set daily use targets intended to reduce peak weekend use to below the 1990 levels.

Three alternative approaches to limit and direct boating use are being considered by a joint agency management team for the Lower Deschutes River between Pelton Dam and the Columbia River. The joint management team represents the Bureau of Land Management, Oregon Parks and Recreation Department, Oregon Marine Board, Oregon Department of Fish and Wildlife, Oregon State Police, the Confederated Tribes of the Warm Springs and the Bureau of Indian Affairs.

If you would like to know more about the public workshops or formal hearings, or if you would like a copy of the report, contact Oregon Parks and Recreation Department, 1115 Commercial St. NE, Salem, OR 97310–1001 (phone: (504) 378–6378, ext. 293). The public is invited to submit written comments on the preferred and other alternatives as well as the analysis of impacts contained in the document. For further information contact: Tom Mottl (telephone: (541) 416–6432).

Dated: March 1, 1996.

James L. Hancock,

District Manager.

[FR Doc. 96–6100 Filed 3–13–96; 8:45 am]

BILLING CODE 4310–33–M

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council Meeting, notice of meeting.

SUMMARY: This notice announces the fourth meeting of the Arizona Resource Advisory Council. The meeting will be held on April 11–12, 1996. The Council will tour project sites within the Kanab, Utah, area on April 11, 1996, and hold a business meeting on April 12, 1996, beginning at 8:00 a.m. at the Bureau of Land Management Office, 345 East Riverside Drive, St. George, Utah. The agenda items to be covered at the business meeting include review of previous meeting minutes, discussion of standards and guidelines comments received during the scoping period and open houses, discussion of an open forum session for the Council to receive information from other organizations

within Arizona, and a report from the public relations working group. A public comment period will take place at 11:30 a.m., April 12, 1996, for any interested publics who wish to address the Council.

FOR FURTHER INFORMATION CONTACT: Clinton Oke, Bureau of Land Management, Arizona State Office, 3707 N. 7th St., Phoenix, Arizona 85014, (602) 650–0512.

Michael A. Taylor,

Acting Deputy State Director, Resource Planning, Use and Protection Division.

[FR Doc. 96–6110 Filed 3–13–96; 8:45 am]

BILLING CODE 4310–32–P

[CO–050–05–1020–00]

Front Range Resource Advisory Council (Colorado) Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix, notice is hereby given that the next two meetings of the Front Range Resource Advisory Council (Colorado) will be held on April 9 and 10, 1996 in Canon City, Colorado and May 14 and 15, 1996 in Alamosa, Colorado.

The meeting April 9 and 10 is scheduled to begin at 9 a.m. at BLM's Canon City District Office, 3170 East Main Street, Canon City, Colorado. The agenda will include: review and discussion of Rangeland Standard and Guidelines on April 9, and a one day ''Exploring Rangeland Ecosystems'' Course on April 10. The meeting May 14 and 15 is scheduled to begin at 9 a.m. at the San Luis Resource Area office 1921 State Street, Alamosa, Colorado. The agenda will include a tour of sites in the San Luis Valley and a discussion of issues.

All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council at 9:30 a.m. the first day of each meeting or written statements may be submitted for the Council's consideration. The District Manager may limit the length of oral presentations depending on the number of people wishing to speak.

DATES: The meeting in Canon City is scheduled for Tuesday, April 9 from 9 a.m. to 5 p.m. and Wednesday April 10 from 8 a.m. to 4 p.m. The meeting in Alamosa is scheduled for Tuesday, May 14 from 9 a.m. to 5 p.m. and Wednesday, May 15 from 8 a.m. to 4 p.m.

ADDRESSES: Bureau of Land Management (BLM), Canon City District Office, 3170 East Main Street, Canon City Colorado 81212; Telephone (719) 269–8500; TDD (719) 269–8597.

FOR FURTHER INFORMATION CONTACT: Ken Smith at 719–269–8553.

SUPPLEMENTARY INFORMATION: Anyone wanting to attend the May 14 and 15 meeting should contact the Canon City District Office prior to the meeting to confirm the times and location. Summary minutes for the Council meeting will be maintained in the Canon City District Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Donnie R. Sparks,

District Manager.

[FR Doc. 96–6101 Filed 3–13–96; 8:45 am]

BILLING CODE 4310–JB–P

[AZ–040–05–1040–00]

Notice of Meeting for the Gila Box Advisory Committee

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with 43 CFR 1780 that a meeting of the Gila Box Riparian National Conservation Area (NCA) Advisory Committee will be held.

DATES: Thursday, April 25, 1996, 10:00 a.m.–4:00 p.m.

ADDRESSES: BLM Safford District Office, 711 14th Ave., Safford, Arizona.

SUPPLEMENTARY INFORMATION: The NCA Advisory Committee was established by the Arizona Desert Wilderness Act of 1990 to provide input to the Safford District on management of the Gila Box Riparian National Conservation Area (NCA). The Committee is continuing work on the Gila Box Interdisciplinary Activity Plan. At this meeting the committee will (1) continue to refine management actions and (2) finalize the preferred alternative.

All meetings are open to the public. Interested persons may make oral statements to the Committee (from 10:30–11:00 a.m.) or may file written statements for consideration by the Committee. Anyone wishing to make an oral statement must contact the BLM Gila resource Area Manager at least two working days prior to the meeting. Written statements are also accepted at any time during preparation of the draft plan, and will be reviewed by the committee.

Statements should be mailed to Elmer Walls, Team Leader, Gila Resource Area, 711 14th Avenue, Safford, Arizona 85546.

Summary minutes of the meeting will be maintained in the Safford District Office and will be available for public inspection (during regular business hours) within 30 days after each meeting.

FOR FURTHER INFORMATION: Meg Jensen, Gila Resource Area Manager, or Elmer Walls, Team Leader, 711 14th Avenue, Safford, Arizona 85546, Telephone (520) 428–4040.

Dated: March 6, 1996.

William T. Civish,

District Manager.

[FR Doc. 96–6098 Filed 3–13–96; 8:45 am]

BILLING CODE 4310–32–M

[NM–931–06–1020–00]

New Mexico Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of council meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix 1, The Department of the Interior, Bureau of Land Management, announces the meeting of the New Mexico Resource Advisory Council (RAC). The Meeting will be held on April 18 and 19, 1996 at the Holiday Inn Don Fernando de Taos, 1005 Paseo del Pueblo Sur, Taos, New Mexico. The meeting will start at 7:30 a.m. each day.

The two day agenda includes two presentations from RAC members, a discussion on expectations of this meeting, a discussion on the NM rangeland management approach that includes standards for rangeland health and guidelines for grazing management, a time for the public to address the RAC and development of a draft agenda for the next RAC meeting. In addition the RAC will select the location and date for the meeting after the Farmington meeting (now set for August 1 and 2, 1996). The meeting is expected to end on the second day at about 3:00 p.m.

The meeting is open to the public. The time for the public to address the RAC is on the first day, April 18, 1996, from 3:00 p.m. to 5:00 p.m. The RAC may reduce or extend the end time of 5:00 p.m. depending on the number of people wishing to address the RAC and the length of time available. At the completion of the public comments the RAC may continue discussion on the

New Mexico rangeland management approach as time permits.

DATES: The RAC will meet on Thursday, April 18, 1996 from 7:30 a.m. to 5:00 p.m. and on Friday, April 19, 1996, from 7:30 a.m. to 3:00 p.m. The public may address the RAC during the public comment period on April 18, 1996 starting at 3:00 p.m.

FOR FURTHER INFORMATION CONTACT: Bob Armstrong, New Mexico State Office, Policy and Planning Team, Bureau of Land Management, 1474 Rodeo Road, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, telephone (505) 438–7436.

SUPPLEMENTARY INFORMATION: The purpose of the Resource Advisory Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of public lands. The Council's responsibilities include providing advice on long-range planning, establishing resource management priorities and assisting the BLM to identify State and regional standards for rangeland health and guidelines for grazing management.

Dated: March 8, 1996.

William C. Calkins,

State Director.

[FR Doc. 96–6125 Filed 3–13–96; 8:45 am]

BILLING CODE 4310–FB–M

[AK–931–1430–01; AA–73136]

Public Land Order 7187; Revocation of Public Land Order No. 835; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes in its entirety a public land order which withdrew lands for townsite and classification purposes at Portage. The lands are no longer needed for the purpose for which they were withdrawn. The lands have been transferred to the Department of Agriculture, Forest Service, by Section 6 of the Alaska Land Status Technical Corrections Act, Public Law 102–415, 106 Stat. 2112, October 14, 1992. This action will also open the lands to such forms of disposition as may by law be made of National Forest System land and will be subject to the Chugach National Forest reservation.

EFFECTIVE DATE: March 14, 1996.

FOR FURTHER INFORMATION CONTACT: Robbie J. Havens, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 835, which withdrew lands for townsite and classification purposes at Portage, is hereby revoked in its entirety as to the following described lands:

Seward Meridian

Chugach National Forest

Located within Tps. 8 and 9 N., R. 3 E., described as:

U.S. Survey No. 2882, Lots 1 to 6, inclusive, Block 3.

The area described contains .89 acre.

U.S. Survey No. 3738, Lot 1.

The area described contains 42 acres.

U.S. Survey No. 7012, Lots 16 and 31.

The area described contain 636.90 acres.

The areas described aggregate 679.79 acres.

2. At 10 a.m. on April 15, 1996, the National Forest System lands described above will be opened to such forms of disposition as may by law be made of National Forest System land, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: February 29, 1996.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 96–6041 Filed 3–13–96; 8:45 am]

BILLING CODE 4310–JA–P

[AK–931–1430–01; A–061696]

Public Land Order 7189; Partial Revocation of Public Land Order No. 2451; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes a public land order insofar as it affects 25.83 acres of public land withdrawn for the use of the Federal Aviation Administration in the maintenance of air navigation facilities as additions to Air Navigation Site No. 176. The land is no longer needed for the purpose for which it was withdrawn. The land will continue to be withdrawn as part of the Alaska Peninsula National Wildlife Refuge, as established and designated by the Alaska National Interest Lands Conservation Act of 1980.

EFFECTIVE DATE: March 14, 1996.

FOR FURTHER INFORMATION CONTACT: Shirley J. Macke, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 2451, which withdrew public land at Cold Bay, is hereby revoked insofar as it affects the following described land:

Seward Meridian

Located within Tps. 58 S., Rs. 88 and 89 W., currently described as U.S. Survey No. 9454.

The area described contains 25.83 acres.

2. The land affected by this order will remain part of and subject to the terms and conditions of the Alaska Peninsula National Wildlife Refuge, pursuant to Sections 302(1) and 304(c) of the Alaska National Interest Lands Conservation Act, 16 U.S.C. 668(dd) (1988), and any other withdrawal or segregation of record.

Dated: February 29, 1996.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 96–6105 Filed 3–13–96; 8:45 am]

BILLING CODE 4310–JA–P

[CO–935–1430–01; COC–58110]

Public Land Order 7188; Withdrawal of Public Lands for Protection of Recreational Sites; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 175 acres of public lands from surface entry and mining for 20 years for the Bureau of Land Management to protect campgrounds and recreational sites. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: March 14, 1996.

FOR FURTHER INFORMATION CONTACT: Doris Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral

leasing laws, to protect three Bureau of Land Management recreation sites:

Sixth Principal Meridian

Collegiate Peaks Scenic Overlook

T. 14 S., R. 78 W.,
Sec. 23. E½SW¼NW¼, NE¼NW¼SW¼, and N½SE¼NW¼SW¼.

Sand Gulch Campground

T. 16 S., R. 70 W.,

Sec. 21, SE¼SE¼SW¼;
Sec. 28, W½NW¼NE¼, NW¼SW¼NE¼, E½SW¼NE¼, W½SE¼NE¼, and NE¼NE¼NW¼.

Bank Campground

T. 16 S., R. 70 W.,

Sec. 33, SW¼NW¼NE¼, NW¼SW¼NE¼, S½NE¼SW¼NE¼, N½SE¼SW¼NE¼, SE¼NE¼NW¼, and NE¼SE¼NW¼.

The areas described aggregate 175 acres in Chaffee and Freemont Counties.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: February 29, 1996.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 96–6106 Filed 3–13–96; 8:45 am]

BILLING CODE 4310–JB-P

[AZ–054–06–1430–00; AZA 29507, AZA 29515]

Notice of Realty Action, Recreation and Public Purposes (R&PP) Act Classification, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands in Mohave County, Arizona have been examined and found suitable for classification for lease or conveyance under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The lands will be used for wastewater treatment plants.

(1) AZA 29507 Topock Golden Shores Sanitary District

Gila and Salt River Meridian, Arizona

T. 16 N., R. 21 W.,

Sec. 14, E½SE¼, NE¼NW¼SE¼, E½SE¼NW¼SE¼.

The area described contains 95.0 acres.

(2) AZA 29515 Bullhead City Sanitary District

T. 19 N., R. 22 W.,
Sec. 10, lots 6, 7, 8, SE¼NE¼.

The area described contains 60.00 acres.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with the current BLM land use planning and would be in the public interest.

The leases/patents, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove materials.

4. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

5. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Yuma District, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona. Upon publication of this notice in the Federal Register, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the Federal Register, interested persons may submit comments regarding the proposed leases/patents or classification of the lands to the Area Manager, Havasu Resource Area Office, 3189 Sweetwater Avenue, Lake Havasu City, AZ 86406.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the lands for wastewater treatment plants. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with the local planning and zoning, or if the use is consistent with the State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for wastewater treatment plants.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the Federal Register.

SUPPLEMENTARY INFORMATION: Bullhead City Sanitary District wastewater treatment plant in section 10 is currently authorized under right-of-way AZA 24103.

FOR FURTHER INFORMATION CONTACT: Janice Easley, Land Law Examiner, Bureau of Land Management, Havasu Resource Area Office, 3189 Sweetwater Avenue, Lake Havasu City, Arizona (520) 855–8017.

Dated: March 6, 1996.

William J. Liebhauser,

Area Manager.

[FR Doc. 96–6099 Filed 3–13–96; 8:45 am]

BILLING CODE 4310–32–P

[OR 52644; OR–080–06–1430–01: G6–0090]

Realty Action; Proposed Modified Competitive Sale

The following described public land has been examined and determined to be suitable for transfer out of Federal ownership by direct sale under the authority of Sections 203 and 209 of the Federal Land Policy and Management Act of 1976, as amended (90 Stat. 2750; 43 U.S.C. 1713 and 90 Stat. 2757; 43 U.S.C. 1719), at not less than the appraised fair market value:

Willamette Meridian, Oregon,

T. 12 S., R. 6 W.,
Sec. 35, Lot 3.

The above-described parcel contains 0.20 acre in Benton County.

The parcel will not be offered for sale until at least 60 days after publication of this notice in the Federal Register. The fair market value of the parcel has not yet been determined. Anyone interested in knowing the value may request this information from the address shown below.

The above-described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above-cited statute, for 270 days or until title

transfer is completed or the segregation is terminated by publication in the Federal Register, whichever occurs first.

The parcel is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency. No significant resource values will be affected by this transfer. The sale is consistent with the Salem District Resource Management Plan and the public interest will be served by offering this parcel for sale.

The parcel is being offered only to Robert W. Mommsen, Jeanne L. Mommsen, and David R. Lorence, fee owners of the adjoining property to the east and south. Use of the direct sale procedures authorized under 43 CFR 2711.3–3, will avoid an inappropriate land ownership pattern and recognize equities of the individuals involved.

The terms, conditions, and reservations applicable to the sale are as follows:

1. Robert W. Mommsen, Jeanne L. Mommsen, and David R. Lorence will be required to submit a deposit of either cash, bank draft, money order, or any combination thereof for not less than the appraised value.

2. The mineral interests being offered for conveyance have no known mineral value. A bid will also constitute an application for conveyance of the mineral estate, in accordance with Section 209 of the Federal Land Policy and Management Act. The designated bidders must include with their bid a nonrefundable $50.00 filing fee for the conveyance of the mineral estate.

2. The patent will subject to:

a. Rights-of-way for ditches or canals will be reserved to the United States under 43 U.S.C. 945; and

b. All valid existing rights and reservations of record.

Detailed information concerning the sale is available for review at the Salem District Office, address above.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the Marys Peak Area Manager, Salem District Office, address above. Any adverse comments will be reviewed by the Salem District Manager, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Dated: March 5, 1996.

John P. Bacho,

Marys Peak Area Manager.

[FR Doc. 96–6102 Filed 3–13–96; 8:45 am]

BILLING CODE 4310–33–M

[UT–040–06–1610–00]

Notice of Intent To Amend Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a proposed plan amendment.

SUMMARY: This notice is to advise the public that the Bureau of Land Management proposes to amend the Cedar-Beaver-Garfield-Antimony Resource Management Plan and the Paria and Escalante Management Framework Plans to allow for land tenure adjustments in Garfield & Kane counties not identified in the current plans.

DATES: The comment period on the proposed amendment will commence with publication of this notice. Comments are due by no later than April 15, 1996.

FOR FURTHER INFORMATION CONTACT: Gregg Christensen, Acting Field Office Manager, Escalante Field Office, 755 West Main, P.O. Box 225, Escalante, Utah 84726, 801–826–4291.

SUPPLEMENTARY INFORMATION: The proposal will amend the referenced plans to create criteria for disposal of lands while protecting important public land resources. Establishing disposal criteria allows flexibility in making exchanges for enhanced management while protecting Public Land values. Further NEPA documentation will occur on individual land disposals as they are proposed. Proposed exchange criteria are as follows: (1) land tenure adjustments would be considered where such adjustments are in the public interest and accommodate the needs of state and local entities, including needs for the economy, community growth and expansion and are in accordance with other land use goals and objectives and RMP/MFP planning decisions; (2) land tenure adjustments result in a net gain of important and manageable resource values on public lands such as critical wildlife habitat, significant cultural sites, high quality riparian areas, live water, Threatened & Endangered Species habitat, or areas key to the maintenance of productive ecosystems; (3) land tenure adjustment ensures the accessibility of public lands in areas where access is needed and cannot otherwise be obtained; (4) land tenure adjustment is essential to allow effective management of public lands in areas where consolidation of ownership is necessary to meet resource management objectives; (5) land tenure adjustment results in the acquisition of lands which serve a national priority as identified in national policy directives. These plans are being updated through the preparation of a more comprehensive Kanab/Escalante Resource Management Plan which is currently on hold and a completion date is uncertain. The amendment now being initiated will be incorporated into this plan.

Dated: March 7, 1996.

Douglas M. Koza,

Acting State Director.

[FR Doc. 96–6039 Filed 3–13–96; 8:45 am]

BILLING CODE 4310–DQ–P

[(ES–960–9800–02–ES02); ES–047894]

Notice of Filing of Plat of Survey; Group 97, Arkansas

The plat of the dependent resurvey of the south boundary, Township 12 North, Range 25 West, a portion of the east boundary, Township 11 North, Range 25 West, portions of the east and south boundaries, Township 12 North, Range 26 West, and portions of the south boundary (Standard Parallel North), east boundary, subdivisional lines, the subdivision of certain sections, and the survey of certain Forest Service Tracts and exceptions of certain Forest Service Tracts of Township 11 North, Range 25 West, Fifth Principal Meridian, Arkansas, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on April 23, 1996. The survey was requested by the U.S. Forest Service.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., April 23, 1996.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: March 7, 1996.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 96–6103 Filed 3–13–96; 8:45 am]

BILLING CODE 4310–GJ–M

[OR–957–00–1420–00: G6–0091]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State

Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 35 S., R. 21 E., accepted January 23, 1996
T. 36 S., R. 3 W., accepted January 22, 1996
T. 36 S., R. 4 W., accepted January 8, 1996
T. 32 S., R. 6 W., accepted February 28, 1996
T. 29 S., R. 11 W., accepted February 27, 1996

Washington

T. 35 N., R. 10 E., accepted January 9, 1996 (2 Sheets)
T. 40 N., R. 32 E., accepted January 22, 1996 (2 Sheets)
T. 20 N., R. 11 W., accepted February 26, 1996
T. 20 N., R. 12 W., accepted February 26, 1996

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515 S.W. 5th Avenue,) P.O. Box 2965, Portland, Oregon 97208.

Dated: March 6, 1996.

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services.

[FR Doc. 96–6112 Filed 3–13–96; 8:45 am]

BILLING CODE 4310–33–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–384]

Notice of Investigation

In the Matter of, Certain Monolithic Microwave Integrated Circuit Downconverters and Products Containing the Same, Including Low Noise Block Downconverters.

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 7, 1996, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Anadigics, Inc., 35 Technology Drive, Warren, NJ 07059. A supplement to the complaint was filed on February 29, 1996. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain monolithic microwave integrated circuit downconverters and products containing the same, including low noise block downconverters, that infringe U.S. Registered Mask Works MW 6086, MW 6095, MW 6103, MW 7794, and MW 7792.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Smith R. Brittingham IV, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone: (202)–205–2576.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10.

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on March 8, 1996, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(D) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain monolithic microwave integrated circuit downconverters and products containing the same, including low noise block downconverters, by reason of infringement of U.S. Registered Mask Works MW 6086, MW 6095, MW 6103, MW 7794, or MW 7792; and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Anadigics, Inc., 35 Technology Drive, Warren, NJ 07059

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Raytheon Company, 141 Spring Street, Lexington, MA 02173
New Japan Radio Co., Ltd., 8–1 Shimo Meguro 1–Chome, Tokyo, 0153, Japan
Nichimen Corp., 1–23 Shiba 4-chome Minato-ku, Tokyo, 107, Japan
Nichimen America Inc., 1185 Avenue of the Americas, New York, New York 10036–2601

(c) Smith R. Brittingham IV, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401–M, Washington, D.C. 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.13. Pursuant to sections 201.16(d) and 210.13(a) of the Commission's Rules, 19 C.F.R. §§ 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the

complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: March 8, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–6074 Filed 3–13–96; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–740 (Preliminary)]

Sodium Azide From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan of sodium azide, provided for in subheading 2850.00.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On January 16, 1996, a petition was filed with the Commission and the Department of Commerce by American Azide Corporation, Las Vegas, Nevada, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of sodium azide from Japan. Accordingly, effective January 16, the Commission instituted antidumping Investigation No. 731–TA–740 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of January 23, 1996 (61 FR 1784). The conference was held in Washington, DC, on February 6, 1996, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on March 1, 1996. The views of the Commission are contained in USITC Publication 2948 (March 1996), entitled ''Sodium Azide from Japan: Investigation No. 731–TA–740 (Preliminary).''

Issued: March 4, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–6076 Filed 3–13–96; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Pursuant to Departmental policy, 28 C.F.R. § 50.7, and 42 U.S.C. 9622(d)(2), notice is hereby given that a proposed consent decree in *United States* v. *Allied Signal, Inc. et al.,* Civil Action No. 96 Civ. 1513, was lodged on March 1, 1995 with the United States District Court for the Southern District of New York. The proposed consent decree resolves the liability of 28 defendants to the United States based upon these defendants' involvement at the Cortese Landfill Superfund Site (''Site'') in the Town of Tusten, New York pursuant to the comprehensive Environmental Response, Compensation and Liability Act, as amended.

Under the terms of the proposed consent decree, the 28 settling defendants agree to remediate the Site at an estimated cost of $10.4 million and to pay the United States all future costs which the Environmental Protection Agency (''EPA'') incurs in overseeing the implementation of the remedy by the settling defendants. In addition, the settling defendants agree to reimburse the Department of Interior (''DOI'') the amount of $134,068, which represents the amount DOI has incurred at the Site and to pay DOI the additional amount of $84,850 for natural resource damages for resources under the trusteeship of DOI.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Allied Signal, Inc. et al.,* D.J. reference #90–11–2–1078.

The proposed consent decree may be examined at the Office of the United States Attorney for the Southern District of New York, 1200 Church Street, New York, New York; the Region II Office of the Environmental Protection Agency, 290 Broadway Avenue, New York, New York; and at the Environmental Enforcement Section Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C., 20005, (202) 624–0892. A copy of the proposed consent decree may also be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $27.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–6093 Filed 3–13–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Order Modifying Amended Consent Decress Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9622(I)

Notice is hereby given that a proposed order modifying the Amended Consent Decree in *United States* v. *Elmer Burrows, et al.,* Civil Action No. K88–128CA8, was lodged on February 23, 1996 with the United States District Court for the Western District of Michigan. The proposed modification of the Amended Consent Decree changes the cleanup standards for chromium in groundwater in connection with the remedial action at the Burrows Sanitation Site in Hartford Township, Van Buren County, Michigan, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9101 *et seq.*

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Order. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice,

Washington, D.C. 20530, and should refer to *United States* v. *Elmer Burrows, et al.*, DOJ Ref. #90–11–2–223.

The proposed Order Modifying Amended Consent Decree may be examined at the office of the United States Attorney, Room 399, Federal Building, 110 Michigan, NW, Grand Rapids, Michigan, 49503; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Order Modifying Amended Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $1.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

United States District Court for the Western District of Michigan

United States of America, Plaintiff/Counter-Defendant, v. Elmer Burrows d/b/a Burrows Sanitation and Auto Specialties Manufacturing Company, Defendants, and Duane Funk, Evelyn Funk, Douglas Mackinder, Georgia Mackinder, Du-Wel Products, Inc., Du-Wel Hartford, Inc., and Whirlpool Corporation, Defendants/Counter-Plaintiffs. Hon. Benjamin Gibson, File No. K88–128CA8.

Charles E. Barbieri,

(P31793)

Attorney for Defendant Du-Wel Products, Inc., 313 S. Washington Square, Lansing, Michigan 48933, Telephone: (517) 372–8050

Order Modifying Amended Consent Decree

At a session of said Court, held in the District Court Rooms, Western District of Michigan, City of Grand Rapids, State of Michigan, on the ____ day of _____, 1994.

Present: Honorable Benjamin Gibson, District Judge.

This Court having reviewed the Joint Motion of Plaintiff, United States of America, and Defendant, Du-Wel Products, Inc., to Modify Amended Consent Decree entered July 20, 1992, and the Supporting Brief; this Court finding that the parties to the Amended Consent Decree have consented to the requested modification in the Joint Motion, and this Court, being fully advised in the premises;

It is hereby ordered and Adjudged, that the Amended Consent Decree entered dated July 20, 1992, be amended as follows:

11.A. Settling Defendants shall perform the Work required herein so that the concentrations of chemicals of concern in the groundwater do not exceed the Safe Drinking Water Act Maximum Contaminant Levels (MCLs), Maximum Contaminant Level Goals (MCLGs), whichever is lower, or Water Quality Criteria for Protection of Human Health due to Ingestion of Drinking Water, where no MCLs or MCLGs exist. These Groundwater Cleanup Standards for the chemicals of concern are as follows:

Chromium—100 UG/L
Copper—1,000 UG/L
Lead—20 UG/L
Nickel—150 UG/L
Zinc—5,000 UG/L.

Extraction and off-site treatment and disposal of the groundwater is required to achieve the Groundwater Cleanup Standards and shall be implemented by Settling Defendants according to the schedule set forth in the Amended RAP. Settling Defendants shall, once Groundwater Cleanup Standards have been achieved, extract and treat and dispose of one additional volume of groundwater equal to that pumped to achieve the Groundwater Cleanup Standards, as required above, or, in the alternative, Settling Defendants may undertake an alternative to extracting and treating and disposing of one additional volume of groundwater equal to that pumped to achieve the Groundwater Cleanup Standards that is acceptable to and approved in writing by U.S. EPA. In any event, Settling Defendants shall continue to extract groundwater and to treat and dispose of the same off-site as required above unless and until U.S. EPA approves in writing an alternative to extracting and treating and disposing of one additional volume of groundwater equal to that pumped to achieve the Groundwater Cleanup Standards, as required above.

It is further ordered that Table 2–1 on page 2–2 of the Amended Remedial Action Plan, which is part of the Amended Consent Decree entered by the Court on July 20, 1992, be amended as follows:

GROUNDWATER CLEAN-UP STANDARDS

[Concentrations reported in UG/L.]

Indicator chemical	Groundwater clean-up standards [a]
Chromium	100
Copper	1,000
Lead	20
Nickel	[b] 150

GROUNDWATER CLEAN-UP STANDARDS—Continued

[Concentrations reported in UG/L.]

Indicator chemical	Groundwater clean-up standards [a]
Zinc	5,000

[a] Based on SDWA MCLs, MCLGs, and proposed MCLGs.

[b] No MCL or MCLG established. Criteria based on Office of Drinking Water Health Advisory.

It is so ordered.

Benjamin Gibson,

U.S. District Judge.

[FR Doc. 96–6097 Filed 3–13–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Amended Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 C.F.R. § 50.7, 38 Fed. Reg. 19029, notice is hereby given that on March 1, 1996, a proposed Amended Consent Decree in *United States* v. *Crown Paper Co. and James River Paper Company, Inc.*, Civil Action No. 95–258–SD, was lodged with the United States District Court for the District of New Hampshire resolving the matters alleged in a complaint filed on May 16, 1995. The proposed Amended Consent Decree concerns alleged violations by James River of Sections 309 (b) and (d) of the Clean Water ACt (''CWA''), 33 U.S.C. §§ 1319 (b) and (d), Sections 3008 (a) and (g) of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. §§ 6928 (a) and (g), Section 109(c) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. § 6909(c), and Section 325(b)(3) of the Emergency Planning and Community Right-to-Know Act (''EPCRA''), 42 U.S.C. 11045(b)(3), at pulp and paper mills operated by James River in Gorham and Berlin, New Hampshire.

The CWA violations alleged in the complaint include: violations of the federal pretreatment standards and National Prohibited Discharge Standard; the unauthorized discharge of pollutants without a permit; and the discharge of pollutants in excess of levels allowed under a permit. The RCRA violation alleged in the complaint includes the disposal of hazardous waste without a permit. Finally, the CERCLA and EPCRA violations alleged in the complaint include the failure to timely report the spill of sulfuric acid at the pulp mill.

Under the terms of the Amended Consent Decree, the defendants will pay a civil penalty of $200,000 to the United States and will be required to comply with the Clean Water Act. In addition, the defendants will be required to install equipment at the pulp mill necessary to reduce certain sulfur emissions from wastewater effluent and to perform a assessment of their compliance with the Clean Water Act's prohibition on unpermitted discharges.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication comments relating to the proposed Amended Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Crown Paper Co. and James River Paper Company*, D.J. Ref. 90–5–1–1–4123.

The proposed Amended Consent Decree may be examines at the Region I Office of the Environmental Protection Agency, One Congress Street, Boston, Massachusetts, and at the office of the United States Attorney, District of New Hampshire, 55 Pleasant Street, Concord, New Hampshire, c/o Gretchen L. Witt, Assistant U.S. Attorney. Copies of the proposed Amended Consent Decree may also be examined at the Consent Decree Library, 1120 G. Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Amended Consent Decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $5.75 (25 cents per page reproduction cost) made payable to Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–6040 Filed 3–13–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 C.F.R. § 50.7, notice is hereby given that a proposed consent decree in *United States* versus *Elliott Drywall & Asbestos, Inc.*, Civil Action No. 94–2487–JWL, was lodged on February 14, 1996 with the United States District Court for the District of Kansas. The United States filed an action against Elliott Drywall alleging violations of the Clean Air Act Section 112, 42 U.S.C. § 7412, and the asbestos NESHAP, 40 C.F.R. Part 61, Subpart M, § 61.45. Under the proposed consent decree, Settling Defendants will pay a civil penalty of $50,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* verus *Elliott Drywall & Asbestos, Inc.*, DOJ Ref. #90–5–2–1–1512A.

The proposed consent decree may be examined at the office of the United States Attorney, District of Kansas, Suite 360, 500 State Avenue, Kansas City, KA 66101; the Region VII Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, KA 66101; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $2.50 (25 cents per page reproduction costs, payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–6095 Filed 3–13–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act

In accordance with Departmental policy, 28 C.F.R. § 50.7, and Section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9622(d)(2), notice is hereby given that a proposed consent decree in *United States* v. *Mobil Mining and Minerals Co.*, Civil Action No. CV H 96 0605 was lodged on February 21, 1996 with the United States District Court for the Southern District of Texas.

The proposed consent decree settles the government's claims set forth in the complaint pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. 9607, 9613, for damages for injury to, destruction of or loss of natural resources belonging to, managed by, controlled by or appertaining to the United States or the State of Texas, including the cost of assessing such injury or loss, because of a release of hazardous substances from a facility known as the Mobil Pasadena facility (Mobil Site) located in Pasadena, Texas. The complaint alleges, *inter alia*, that the defendant is an owner and operator of the Pasadena facility from which hazardous substances were released on April 6, 1992.

Under the terms of the proposed consent decree, the defendants agree to fund and implement a remedy near the Pasadena site which includes the creation and maintenance of a Wetlands Restoration Project.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Mobil Mining and Minerals Co.*, DOJ Ref. #90–11–2–1027.

The proposed consent decree may be examined at the Office of the United States Attorney, Southern District of Texas, 910 Travis St., suite 1500, Houston, TX 77002 and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $6.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–6094 Filed 3–13–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to 28 C.F.R. § 50.7

Notice is hereby given that the proposed consent decree in *United States* v. *The Municipal Authority of Union Township, et al.*, Civil Action No. 1:CV–94–0621, was lodged on February 29, 1996 with the United States District Court for the Middle District of Pennsylvania. The Consent Decree requires the Municipal Authority of Union Township to pay $20,000 in civil penalties and to perform certain injunctive relief for its failure to enforce its pretreatment program in violation of

the Section 307 of the Clean Water Act, 33 U.S.C. § 1317.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *The Municipal Authority of Union Township, et al.* DOJ Ref. #90–5–1–1–5053.

The proposed consent decree may be examined at the office of the United States Attorney, 228 Walnut Street, Suite 1162, Harrisburg, PA 17108; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of each proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4TH Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–6096 Filed 3–13–96; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Administration and Management

National Skill Standards Board; Notice of Open Meeting

AGENCY: Office of the Assistant Secretary for Administration and Management, Labor.

ACTION: Notice of open meeting.

SUMMARY: The National Skill Standards Board was established by an Act of Congress, the Goals 2000: Educate America Act of 1994, Title V, Pub. L. 103–227. The 28-member National Skill Standards Board will serve as a catalyst and be responsible for the development and implementation of a national system of voluntary skill standards and certification through voluntary partnerships which have the full and balanced participation of business, industry, labor, education and other key groups.

TIME AND PLACE: The meeting will be held from 8:00 a.m. to approximately 4:00 p.m. on Tuesday, March 19, 1996, in the Dolly Madison Ballroom, 2nd Floor of the Madison Hotel at 15th & M Streets N.W., Washington, D.C.

AGENDA: The agenda for the Board Meeting will include discussion of: civil rights considerations about developing standards; obtaining worker buy-in to a voluntary national skill standards system.

PUBLIC PARTICIPATION: The meeting from 8:00 a.m. to 4:00 p.m. is open to the public. Seating is limited and will be available on a first-come, first-served basis. Seats will be reserved for the media. Disabled individuals should contact Leslie Kinney at (202) 254–8628, if special accommodations are needed.

FOR FURTHER INFORMATION CONTACT: Sally Conway at (202) 254–8628.

Signed at Washington, D.C., this 5th day of March 1996.

Judy Gray,

Executive Director, National Skill Standards Board.

[FR Doc. 96–6140 Filed 3–13–96; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)((2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed new collection of information supporting the request for a waiver of regulations at 20 CFR Parts 632 and 636, pursuant to the requirements of 20 CFR 632.70 (60 FR 58228–9, November 27, 1995).

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before May 13, 1996.

The Department of Labor is particularly interested in comments which:

- 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;
- 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;
- enhance the quality, utility, and clarity of the information to be collected; and
- 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 submissions of responses.

ADDRESSES: Written comments shall be mailed to the Department of Labor, Employment and Training Administration, Room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Paul A. Mayrand, Director, Office of Special Targeted Programs. Persons wishing acknowledgment of receipt of their comments shall submit them by certified mail, return receipt requested.

Comments received will be available for public inspection during normal business hours at the Division of Indian and Native American Programs, Department of Labor, Room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. To schedule such an appointment, call (202) 219–5500 (VOICE), (202) 219–6338 (FAX) or (202) 219–2577 (TDD) (these are not toll free numbers).

Copies of the subject Interim Final Rule are available on computer disk or in a large type edition which may be obtained at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Dowd, Chief, Division of Indian and Native American Programs, Office of Special Targeted Programs, Employment and Training Administration, Department of Labor, Room N–4641, 200 Constitution

Avenue, NW., Washington, DC 20210. Telephones: (202) 219–8502 (VOICE), (202) 219–6338 (FAX) or (202) 326–2577 (TDD) (these are not toll free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

The Employment and Training Administration requires information on the provisions of the amended Job Training Partnership Act (JTPA) section 401 regulations at 20 CFR 632.70. These provisions allow Indian and Native American JTPA grantees to seek the waiver of nonstatutory provisions of the current regulations at 20 CFR Parts 632 and 636. This general waiver request capability is already available to the Governors at 20 CFR 627.201, and to those section 401 grantees participating in the demonstration under Public Law 102–477 (Indian Employment, Training and Related Services Demonstration Act of 1992). The information to be collected is in support of any such waiver request(s) submitted by section 401 grantees pursuant to 20 CFR 632.70, and is necessary to allow DOL officials to make intelligent and informed decisions on the waiver requests received. Without such supplementary information, it would be impossible for the Department to grant any waivers to existing regulations. There are no continuing information requirements associated with this collection. Such collection is only mandated when a waiver request is submitted by a grantee, and serves no purpose other than to evaluate the merits of the waiver request.

II. Current Actions

None, as there is no general waiver request capability in effect for JTPA section 401 programs at the current time:

Type of Review: New
Agency: Employment and Training Administration
Title: Indian and Native American Employment and Training Programs, Justification for Requested Waiver of Regulations Under 20 CFR Parts 632 and 636
Recordkeeping: Pursuant to the regulations at 29 CFR 97.42 (OMB Circular A–102) and 29 CFR 95.53 (OMB Circular A–110), grantees receiving waivers must retain all documentation related to said waivers for a period of three years from the date of submission of the final expenditure report (grant closeout).
Affected Public: Not-for-profit institutions; State, Local or Tribal Government
Total Respondents: 75
Frequency: On occasion
Total Responses: 75
Average Time per Response: 3 hours
Estimated Total Burden Hours: 225
Total Burden Cost (capital/startup): None
Total Burden Cost (operating/maintaining): Not applicable

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed at Washington, DC, this 6th day of March, 1996.

Paul A. Mayrand,

Director, Office of Special Targeted Programs.

[FR Doc. 95–6120 Filed 3–13–96; 8:45 am]

BILLING CODE 4510–30–M

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Full Committee Meeting

Notice is hereby given that the Advisory Committee on Construction Safety and Health, established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), will meet on April 9–10, 1996 at the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3437 A–D, Washington, DC. The meetings of the full Committee are open to the public and will begin at 9 a.m. on April 9 and at 8:30 a.m. on April 10. The meeting will conclude at approximately 5:00 p.m. on April 9 and at approximately 12:00 p.m. on April 10.

On April 9, OSHA will brief the ACCSH regarding the status of standards-related activities for construction. In particular, the Agency will report on the draft final rule for scaffolds (subpart L); the deliberations of the Steel Erection Negotiated Rulemaking Advisory Committee; and the status of rulemaking efforts regarding fall protection (subpart M), safety and health programs, confined spaces, powered industrial trucks and hazard communication. In addition, OSHA will brief the Committee on the activities of OSHA's Directorate of Construction and on pertinent legislative, compliance and paperwork reduction issues.

After a lunch break, the work groups on Musculoskeletal Disorders, Safety and Health Programs, Confined Spaces, and Health and Safety for Women in Construction will meet from approximately 2:00 p.m. to 5:00 p.m.

On April 10, the Agency will report on the development of guidelines for participation in OSHA Partnership programs. In addition, the work groups will report back to the full Advisory Committee and the full Committee will discuss the reports from the work groups.

Written data, views or comments may be submitted, preferably with 20 copies, to the Division of Consumer Affairs, at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting.

Anyone who wishes to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Persons who request the opportunity to address the Advisory Committee may be allowed to speak, as time permits, at the discretion of the Chairman of the Advisory Committee. Individuals with disabilities who wish to attend the meeting should contact Tom Hall, at the address indicated below, if special accommodations are needed.

For additional information contact: Tom Hall, Division of Consumer Affairs, Room N–3647, Telephone 202–219–8615, at the Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC, 20210. An official record of the meeting will be available for public inspection at the OSHA Docket Office, Room N–2625, Telephone 202–219–7894.

Signed at Washington, D.C. this 8th day of March, 1996.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 96–6121 Filed 3–13–96; 8:45 am]

BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440]

The Cleveland Electric Illuminating Company, et al.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing: Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Correction.

SUMMARY: This document corrects a notice appearing in the Federal Register on March 6, 1996 (61 FR 8982), that states that the Commission is considering issuance of an amendment to Facility Operating License No. NPF–58, issued to the Cleveland Electric Illuminating Company, et al. This action is necessary to change an erroneous filing date.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, telephone (301) 415–7163.

SUPPLEMENTARY INFORMATION: On page 8983, in the third complete paragraph in the second column, the date ''March 18, 1996,'' should read ''April 5, 1996.''

Dated at Rockville, Maryland, this 10th day of March 1996.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 96–6128 Filed 3–13–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–397]

Washington Public Power Supply System (WPPSS); Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing: Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Correction.

SUMMARY: This document corrects a notice appearing in the Federal Register on March 4, 1996 (61 FR 8307), that states that the Commission is considering issuance of an amendment to Facility Operating License No. NPF–21, issued to the Washington Public Power Supply System. This action is necessary to change an erroneous filing date.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, telephone (301) 415–7163.

SUPPLEMENTARY INFORMATION: On page 8307, in the second complete paragraph in the third column, the date ''March 29, 1996,'' should read ''April 3, 1996.''

Dated at Rockville, Maryland, this 10th day of March 1996.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 96–6129 Filed 3–13–96; 8:45 am]

BILLING CODE 7590–01–P

NRC Bulletin 96–01, Control Rod Insertion Problems Issuance of Bulletin

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Bulletin 96–01 to alert holders of pressurized water reactor (PWR) licenses (except those licenses that have been amended to possession-only status) to several recent events in which control rods have failed to completely insert into the reactor core after receiving a scram signal, and assess the operability of control rods, particularly in high burnup fuel assemblies. It is expected that all PWR license holders will review the information for applicability to their facilities and consider actions, as appropriate, to avoid similar problems. However, action is only requested from PWR license holders of Westinghouse-designed plants. This bulletin is available in the NRC Public Document Room under accession number 9603120001. This bulletin is discussed in Commission information paper SECY–96–048 which is also available in the NRC Public Document Room.

DATES: The bulletin was issued on March 8, 1996.

ADDRESSES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Laurence I. Kopp, (301) 415–2879 (or Internet:lik@nrc.gov).

SUPPLEMENTARY INFORMATION: Several recent events in domestic reactors, as well as similar events in foreign reactors, have raised concerns about the operability of control rods in high burnup fuel assemblies, and may be precursors of more significant control rod binding problems in which required shutdown margins and rod drop times may be violated. Therefore, the NRC issued this bulletin to request that licensees promptly inform operators of recent events in which control rods did not fully insert and subsequently provide necessary training in required emergency response procedures. The bulletin also requests licensees to promptly determine the continued operability of control rods based on current information, to measure and evaluate control rod performance characteristics at each outage of sufficient duration during 1996, and assess the operability and performance trend of the rods, in particular those which do not fully insert promptly, for each reactor trip during 1996.

Dated at Rockville, Maryland, this 8th day of March, 1996.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 96–6127 Filed 3–13–96; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Patricia Paige, (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on February 21, 1996 (61 FR 6664). Individual authorities established or revoked under Schedules A and B and established under Schedule C between January 1, 1996, and January 31, 1996, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

No Schedule A authorities were established or revoked in January 1996.

Schedule B

No Schedule B authorities were established or revoked in January 1996.

Schedule C

The following Schedule C authorities were established in January 1996.

Department of Agriculture

Confidential Assistant to the Administrator, Grain Inspection,

Packers and Stockyards Administration. Effective January 30, 1996.

Department of Commerce

Speechwriter to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning. Effective January 25, 1996.

Special Assistant to the Press Secretary and Acting Director, Office of Public Affairs. Effective January 25, 1996.

Special Assistant to the Deputy Assistant Secretary for International Economic Development. Effective January 31, 1996.

Department of Defense

Public Affairs Specialist to the Assistant to the Secretary of Defense for Public Affairs. Effective January 19, 1996.

Speechwriter to the Assistant to Secretary of Defense for Public Affairs. Effective January 19, 1996.

Department of Education

Confidential Assistant to the Director, Scheduling and Briefing Staff. Effective January 16, 1996.

Confidential Assistant to the Assistant Secretary, Office of Intergovernmental and Interagency Affairs. Effective January 18, 1996.

Department of Energy

Staff Assistant to the Director, Scheduling and Logistics. Effective January 4, 1996.

Staff Assistant to the Assistant Secretary for Energy Efficiency and Renewable Energy. Effective January 4, 1996.

Associate Director to the Director, Office of Nuclear Energy, Science and Technology. Effective January 30, 1996.

Department of Health and Human Services

Deputy Assistant Secretary for Legislative (Congressional Liaison) to the Assistant Secretary for Legislation. Effective January 18, 1996.

Department of Housing and Urban Development

Executive Assistant to the Assistant Secretary for Public and Indian Housing. Effective January 18, 1996.

Special Assistant to the Director of Executive Scheduling. Effective January 19, 1996.

Intergovernmental Relations Specialist to the Deputy Assistant Secretary for Intergovernmental Relations. Effective January 25, 1996.

Deputy Assistant Secretary for Operations to the Assistant Secretary for Community Planning and Development. Effective January 25, 1996.

General Deputy Assistant Secretary for Housing to the Assistant Secretary for Housing. Effective January 25, 1996.

Special Assistant to the Assistant Secretary for Housing. Effective January 25, 1996.

Secretary's Representative to the Deputy Secretary for Field Management. Effective January 25, 1996.

Department of Labor

Director of Special Projects to the Assistant Secretary for Public Affairs. Effective January 19, 1996.

Special Assistant to the Deputy Secretary. Effective January 23, 1996.

Special Assistant to the Assistant Secretary for Public Affairs. Effective January 30, 1996.

Department of the Treasury

Special Assistant to the Deputy Secretary of the Treasury. Effective January 30, 1996.

Equal Employment Opportunity Commission

Director, Legislative Affairs Staff to the Director, Office of Communications and Legislative Affairs. Effective January 31, 1996.

Export-Import Bank of the United States

Administrative Assistant to the Director. Effective January 18, 1996.

Federal Housing Finance Board

Special Assistant to the Chairman. Effective January 4, 1996.

General Services Administration

Director, Office of Media Relations to the Associate Administrator for Public Affairs. Effective January 11, 1996.

Special Assistant to the Chief of Staff. Effective January 16, 1996.

Senior Advisor to the Regional Administrator. Effective January 31, 1996.

National Aeronautics and Space Administration

White House Liaison Officer to the NASA Administrator. Effective January 31, 1996.

Securities and Exchange Commission

Director of legislative Affairs to the Chairman. Effective January 19, 1996.

Small Business Administration

Assistant Administrator for Women's Business Ownership to the Associate Deputy Administrator for Economic Development. Effective January 23, 1996.

Special Assistant to the Associate Deputy Administrator for Economic Development. Effective January 23, 1996.

U.S. Arms Control and Disarmament Agency

Special Assistant to the Director of Public Affairs. Effective January 23, 1996.

United States Information Agency

Special Assistant to the Director, Worldnet. Effective January 30, 1996.

Program Officer to the Deputy Director, Office of European and NIS Affairs. Effective January 31, 1996.

United States Tax Court

Secretary (Confidential Assistant) to the Judge. Effective January 30, 1996.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 96–5949 Filed 3–13–96; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–21812; 812–9724]

The Flex-Partners and Mutual Fund Portfolio; Notice of Application

March 7, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: The Flex-Partners (the ''Trust'') and Mutual Fund Portfolio (the ''Portfolio'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from section 12(d)(1)(F) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit the TAA Fund (the ''Fund''), a series of the Trust, to offer a class of shares to the public with a sales load that exceeds the 1.5% sales load limitation of section 12(d)(1)(F)(ii) of the Act.

FILING DATE: The application was filed on August 14, 1995 and amended on November 20, 1995 and January 22, 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 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 April 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 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, N.W., Washington, D.C. 20549. Applicants, 6000 Memorial Drive, Box 7177, Dublin, Ohio 43017; cc: James B. Craver, Esq., 266 Summer Street, Boston, MA 02210.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0547, 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.

Applicants' Representations

1. The Trust is organized as a Massachusetts business trust. The Fund, a series of the Trust, is a newly organized investment company established to provide investors with a means of investing in a diversified pool of open-end investment companies through a structure frequently referred to as a ''master/feeder.'' The Fund's investment objective is growth of capital through investment in the shares of other mutual funds (''underlying funds''). The Fund proposes to achieve its investment objective by investing all of its assets in the Portfolio under section 12(d)(1)(E) of the Act, which in turn would invest in the underlying funds under section 12(d)(1)(F) of the Act. The Portfolio's investment adviser is R. Meeder & Associates, Inc. (the ''Adviser''). Neither the Trust nor the Fund has an investment adviser. Roosevelt & Cross Incorporated is the Fund's distributor (the ''Distributor'').

2. Applicants propose that the Fund offer a class of shares (''Class A Shares'') to the public subject to a sales load up to 4% of the public offering price. Applicants state that the Class A Shares would incur an asset-based fee under rule 12b–1 under the Act.[1] The Portfolio has no distribution expense or 12b–1 plan of its own, and none is contemplated or ever likely to be implemented. The maximum aggregate of fees proposed to be borne by the Fund and the Portfolio together would be 4.5% of assets.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets.

2. Sections 12(d)(1)(E) and 12(d)(1)(F) provide specific exceptions from the provisions of section 12(d)(1). Section 12(d)(1)(E) provides, in pertinent part, that section 12(d)(1) shall not apply where the investment company invests in a single investment security. Section 12(d)(1)(F) permits an acquiring company to own up to 3% of the acquired company's securities, provided that the acquiring company does not impose a sales load of more than 1.5% on its shares. In addition, no issuer of any security shall be obligated to redeem such security in any amount exceeding 1% of such issuer's total outstanding securities during any period of less than 30 days.

3. Applicants' proposal combines the exceptions provided under sections 12(d)(1)(E) and 12(d)(1)(F). Applicants request relief from the 1.5% sales load limitation of section 12(d)(1)(F)(ii) so that the Fund can offer Class A Shares subject to a sales load of no more than 4% of the public offering price.

4. Applicants argue that section 12(d)(1) is intended to (a) prevent unregulated pyramiding of investment companies, (b) prevent control of underlying funds by an acquiring fund, (c) protect underlying funds from the negative impact of sudden large redemptions, and (d) prevent the imposition on investors of excessive costs and fees attendant upon multiple layers of investments. Applicants believe that, because they seek relief only from the sales load limitation of section 12(d)(1)(F)(ii), these regulatory concerns are adequately addressed by their proposed structure. Applicants state that pyramiding does not arise because the Portfolio, and all affiliated persons of the Portfolio, cannot own more than 3% of the total outstanding stock of any underlying fund. Applicants contend that undue control over underlying funds does not arise because the Portfolio will remain subject to the redemption and voting limitations of section 12(d)(1)(F). Applicants assert that the underlying funds are protected from the negative impact of large redemptions by the funds' ability to invoke section 12(d)(1)(F)'s redemption limitation. The Adviser can determine, in such a situation, to spread the redemption transaction out over a long enough period to be consistent with such statutory limitation, or to accept redemptions in kind.

5. Applicants contend that granting the requested relief will not result in layering of fees, as beneficial interests in the Portfolio are sold at net asset value without any sales load, and the Portfolio generally does not pay a sales load on its fund investments. Applicants state that the total asset-based sales charges of 4.5% will be well within the limits established by the NASD. Applicants assert that the condition subjecting any sales charges or service fees to the limits established by the NASD will provide ongoing regulation with the flexibility to accommodate continuing developments in the industry.

6. Applicants believe that sales of Class A Shares will increase the assets held by the Portfolio, thereby increasing the likelihood that the Portfolio will successfully realize the economies of scale available in the master/feeder structure, and leading to overall lower fees. Applicants also believe that the higher level of assets in the Portfolio will enable them to purchase more ''load'' funds that eliminate their sales charge on purchases of a certain size.

7. Applicants assert that the requested exemption is appropriate in the public interest because it will enable investors, and particularly investors who use the services of broker-dealers, to consider applicants' proposed fund of funds structure as an option among the growing number of competing investment arrangements. Applicants believe that, because the number and variety of mutual funds has increased dramatically since 1970, investors can benefit increasingly from the professional investment advice that a fund of funds structure provides, including a fund of funds that is not limited to funds managed by a single investment adviser. Due to the sales load limitation in section 12(d)(1)(F), however, unaffiliated funds of funds are generally available to investors only through no-load distribution channels. Moreover, applicants assert that the Distributor has met with substantial sales resistance from broker-dealers who decline to market shares of funds unless a front-end load is available Applicants therefore contend that, for investors who seek advice through broker/dealers, the Fund provides a practical means of investing in a diversified pool of

[1] Under rule 12b–1, funds are permitted to finance the distribution of their shares from fund assets subject to certain conditions.

unaffiliated open-end investment companies.

8. Section 6(c) provides that the SEC may exempt any person or transaction from any provisions 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 and provisions of the Act. Applicants believe that the requested order satisfies this standard.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. The Portfolio and the Fund will comply with section 12(d)(1)(F) in all respects except for the sales load limitation of section 12(d)(1)(F)(ii).

2. Any sales charges or service fees charged with respect to securities of the Fund, when aggregated with any sales charges or service fees paid by the Portfolio with respect to securities of the underlying funds, shall not exceed the limits set forth in Article III, section 26, of the NASD's Rules of Fair Practice.

3. A majority of the trustees or directors of each of the Fund, the Portfolio and each other feeder fund investing in the Portfolio will not be ''interested persons'' as defined in section 2(a)(19) of the Act.

4. Before approving any advisory contract under section 15 of the Act, the Board of Trustees of the Portfolio, including a majority of the Trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, shall find that advisory fees charged under such contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any underlying fund's advisory contract. Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Portfolio.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–6057 Filed 3–13–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26487]

Filings Under the Public Utility Holding Company Act of 1935, As Amended (''Act'')

March 8, 1996.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declarations(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 1, 1996, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Unitil Corporation, et al.

Unitil Corporation (''Unitil''), a registered holding company,[1] Unitil's wholly-owned non-utility subsidiary, Unitil Resources, Inc. (''URI''), and Unitil's wholly-owned service company subsidiary, Unitil Service Corp. (''Unitil Service'') (collectively ''Applicants''), all located at 216 Epping Road, Exeter, New Hampshire, 03833, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12, and 13(b) of the Act and rules 45, 54, 87, 90, and 91 thereunder.

Pursuant to a Commission order dated May 24, 1993 (HCAR No. 25816), URI is currently engaged in the business of providing certain energy related management and consulting services, including electric power brokering, to entities outside the Unitil holding company system. Applicants request authorization for URI to expand its authorized activities to include engaging in transactions as a wholesale and retail marketer of electricity, natural gas and other energy commodities (''collectively, ''Energy Marketing''),[2] and providing customers with certain energy related services involving technical assistance and energy management (collectively, ''Energy Management Services'')[3] While initially concentrated in the New England region, URI's potential customer base may include individuals and entities located outside the New England region.

Applicants also seek authorization for Unitil to indemnify and guarantee the power and fuel transactions of URI, through December 31, 2000 and in an amount not to exceed $30 million in the

---

[1] Unitil has four utility subsidiaries: Fitchburg Gas and Electric Light Company (''FG&E''), Concord Electric Company (''Concord''), Exeter & Hampton Electric Company (''E&H'') and Unitil Power Corporation.

[2] Applicants state that URI's Energy Marketing activities will involve arranging the sale and purchase, transportation, transmission and storage of electricity, natural gas or other energy commodities for a commission as well as entering into contracts to purchase electricity, natural gas or other energy commodities from suppliers and resell them to utility and nonutility customers. Applicants state that energy marketing arrangements may be undertaken for long or short term durations and pursuant to individualized terms and conditions, and that sales of energy to groups of customers would likely be aggregated together for purposes of obtaining competitive wholesale energy supplies. Applicants state that, in some cases, URI may acquire energy supplies and then market that energy to customers as competitively as possible, whereas in other cases, URI may establish contracts with customers and then acquire energy supplies to meet the customers' requirements. Although the Energy Marketing transactions URI proposes to engage in may take a variety of different forms, in a typical transaction, URI will purchase power from a utility or nonutility generator, contract with other utilities for the transmission of the power, and resell the power to a utility or end-user. Applicants expect that the bulk or URI's Energy Marketing activities will involve marketing electricity or gas, but state the URI needs to be able to engage in transactions involving other energy commodities, such as oil, refined petroleum products, gas liquids, coal, wood and other similar combustible substances, in order to compete effectively with other suppliers in the marketplace who can provide a full range of energy options to meet customer demands.

[3] Applicants state that such Energy Management Services may include demand side management, and energy usage consulting services, as well as limited engineering services pertaining to power quality management (ensuring uninterruptible supplies, proper grounding of equipment and related matters) and power factor correction, both of which are designed to help customers manage their power efficiency, supply and cost. Applicants state that Concord, E&H and FG&E currently provide demand side management services to their customers, including, among other things, hot water heater tank and pipe wrapping, energy efficient lighting, heating and cooling programs, energy audits and the provision of rebates in connection with energy efficient equipment. Concord, E&H and FG&E also currently provide engineering services pertaining to power quality management and power factor correction for their own systems and, on occasion, for their customers. Applicants note that some employees of Unitil's public utility subsidiaries may perform certain of the technical engineering functions that are part of URI's demand side management services but state that the performance of such functions will not impair the employees' ability to provide services to the relevant utility subsidiaries. Applicants expect that URI's Energy Marketing and Energy Management Services will often be marketed jointly to customers as a complete energy services package and state that the ability to offer both types of services will enable URI to offer complete energy management services and solutions to customers on a competitive basis.

aggregate,[4] and for Unitil Service to provide URI with facilities, personnel and services necessary for its energy Marketing and Energy Management Services activities.[5]

Applicants state that URI must obtain authorization from the Federal Energy Regulatory Commission (''FERC'') before engaging in wholesale electric power marketing activities and from the appropriate state authorities before engaging in retail electric power marketing activities. Applicants state that URI will not enter into any electric power purchase or sale contracts that are not within federal or state regulatory purview and that its activities in developing wholesale and retail electric power markets will, therefore, be subject to appropriate limitations, conditions and controls.[6] Applicants state that URI's gas and energy commodity marketing activities and its Energy Management Services activities will also be undertaken in accordance with all applicable federal and state laws.

New England Electric System (70–8803)

New England Electric System (''NEES''), a registered holding company, located at 25 Research Drive, Westborough, Massachusetts 01582, has filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and rule 45 thereunder.[7]

NEES proposes to form one or more direct or indirect new subsidiaries (''Marketing Companies'') in Massachusetts, Rhode Island, New Hampshire, New York, New Jersey, Pennsylvania, Maryland and Delaware to engage in the business of wholesale and retail marketing of electricity.[8] Marketing Companies in Massachusetts, Rhode Island and New Hampshire that elect to provide Standard Offer Service may provide such services only to customers of affiliated Retail Companies. In addition, NEES proposes to establish Marketing Companies in each of these three states, as well as the other states noted above, that will market electricity to retail and wholesale customers of affiliated Retail Companies that do not choose Standard Offer Service and to customers of nonaffiliated electric utilities (''General Marketing Companies'').[9]

The Marketing Companies also propose to provide a broad range of energy and related services to customers, including but not limited to audits, power quality, fuel supply, repair, maintenance, construction, design, engineering and consulting.

Initially, the Marketing Companies are expected to have only a few employees, primarily sales staff. Technical and support staff needed for a particular project could be assigned for the duration of that project from NEES, NEP and/or the Retail Companies. No more than 1% of the employees of NEES, NEP and/or the Retail Companies will render, directly or indirectly, services to the Marketing Companies at any one time. All costs associated with such staff (including compensation, overheads and benefits) would be fully reimbursed by the Marketing Company to which they were assigned in accordance with rules 90 and 91. Reimbursements for these costs will be on a thirty-day cycle in accordance with service contracts to be entered.

NEES proposes initially to finance the Marketing Companies by purchasing 1,000 shares of their capital stock, for a total purchase price of $1,000. Subsequently, NEES intends to make capital contributions and/or loans to the Marketing Companies from time to time through December 31, 1999, provided that such contributions and/or loans for all Marketing Companies will not exceed $15 million. Any loans will be in the form of noninterest bearing subordinated notes payable in twenty years or less from the date of issue. The Marketing Company may prepay any or all of the outstanding notes without premium or penalty. NEES shall only make such loans provided: (a) There shall be in full force and effect appropriate orders of all regulatory authorities having jurisdiction; (b) the making of such loan shall not contravene any provision of law or any provisions of the certificate of incorporation or by-laws or any binding agreement of the Marketing Company; (c) and the making of such loan shall not contravene any provision of law or any provision of the Agreement and Declaration of Trust of NEES. To the extent that these loans require state commission approval, rule 52 of the Act may apply.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

FR Doc. 96–6090 Filed 3–13–96; 8:45 am]

BILLING CODE 8010–01–M

[4] Applicants state that URI may, from time to time, need Unitil to indemnify third parties, to guarantee performance of its obligations or payment of its debts and/or to act as surety for its activities. The need for such guarantee authority grows out of customary market practice pursuant to which energy marketing companies, which often are not highly capitalized, demonstrate their financial credibility to customers. Applicants state that the usual method for establishing the financial credibility of the marketing company is by the parent (such as Unitil) standing behind its subsidiary through guarantees, thus allowing the subsidiary to compete effectively in increasingly deregulated markets.

[5] Applicants state that services would be provided by Unitil Service pursuant to its service agreement with URI and may include gas and power supply planning and contracting, marketing, sales, customer services, engineering, operations management, conservation services design and contracting and related management and professional services. Applicants note that Unitil Service currently provides similar services to other Unitil system companies and state that Unitil Service personnel have extensive knowledge of the markets for electric power and natural gas and are experienced in evaluating potential electric power and natural gas suppliers, negotiating contracts and arranging for the transmission and pooling of electric power. URI would reimburse Unitil Service at cost for the services provided in the same manner as any other Unitil affiliate company. Applicants state that the provision of these services to URI by Unitil Service will not impair Unitil Service's ability to provide services to other Unitil system companies. They also note that, if needed in the future, URI could employ its own staff to provide these services.

[6] Applicants note, for example, that FERC regulations would preclude URI from purchasing electric energy or capacity from, or selling these products to, any affiliated companies in the Unitil system unless specifically authorized by the FERC. In addition, under FERC regulations, URI would be unable to charge competitive, market based rates at wholesale unless its affiliated public utility companies have filed open access transmission tariffs acceptable to the FERC, and until URI has satisfied the FERC that it has mitigated any market power which it may have. Applicants also state that, while URI is not deemed a utility under most state laws, URI would only be able to undertake retail power marketing activities in the context of state legislative or regulatory initiatives, such as the New Hampshire Retail Wheeling Pilot Program and the Massachusetts Industry Restructuring Proceedings. Thus, Applicants say, URI's retail activities would be effectively limited to those permitted by state regulators. Applicants also note that Unitil has notified the New Hampshire Public Utility Commission and the Massachusetts Department of Public Utilities, the two state commissions with jurisdiction over the public utility subsidiaries in the Unitil system, of the plan to expand URI's business activities.

[7] NEES owns three retail electric utility companies (''Retail Companies'') serving New Hampshire, Massachusetts, and Rhode Island, as well as New England Power Company (''NEP''), which generates, purchases, transmits, and sells electric energy in wholesale quantities primarily to the Retail Companies.

[8] New Hampshire has adopted a pilot program to establish retail electric competition, under which each New Hampshire utility must allow customers representing three percent of their peak loads to have access to alternative suppliers of electricity for two years, starting on or about May 28, 1996. Massachusetts and Rhode Island also are considering programs to promote retail competition. Under a proposal developed by NEES, customers could elect to receive service under a standard offer from an affiliate of their incumbent utility (''Standard Offer Service''), the pricing of which would be approved by regulators.

[9] Under New Hampshire's pilot program, a General Marketing Company would have limited ability to contract with customers of nonaffiliated electric utilities within New Hampshire.

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the

Securities and Exchange Commission will hold the following meeting during the week of March 11, 1996.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matter may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matter at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, March 13, 1996, at 3:00 p.m., will be:

Institution and settlement of administrative proceedings of an enforcement nature.

Institution of injunctive action.

Commissioner Johnson, as duty officer, required that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: March 12, 1996.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–6318 Filed 3–12–96; 3:42 pm]

BILLING CODE 8010–01–M

[Release No. 34–36947; International Series Release No. 949; File No. SR–AMEX–95–43]

Self-Regulatory Organizations; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2 and 3 to Proposed Rule Change by the American Stock Exchange, Inc. Relating to Index Fund Shares

March 8, 1996.

I. Introduction and Background

On October 26, 1995, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade Index Fund Shares. On November 14, 1995, the Amex filed Amendment No. 1 to its proposal.[3] Notice of the proposal appeared in the Federal Register on December 6, 1995.[4] On March 6, 1996, the Amex filed Amendment No. 2 to its proposal.[5] On March 7, 1996, the Amex filed Amendment No. 3 to its proposal.[6] No comments were received on the proposed rule change set forth in the Notice. This order approves the Exchange's proposal

II. Description of the Proposal

A. Index Fund Shares

The Amex proposes to list and trade under Rules 1000A *et seq.* securities issued by an open-end management investment company (''Fund'') that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic equity market index (''Index Fund Shares'' or ''Fund Shares''). Index Fund Shares will be issued by an entity registered with the Commission as an open-end management investment company, and which may be organized as a series fund providing for the creation of separate series of securities, each with a portfolio consisting of some or all of the component securities of a specified securities index. A Fund may establish tracking tolerances which will be disclosed in the prospectus for a particular Fund or series thereof, as discussed in greater detail below.

Issuances of Index Fund Shares by a Fund will be made only in minimum size aggregations or multiplies thereof (''Creation Units''). The size of the applicable Creation Unit size aggregation will be set forth in the Fund's prospectus, and will vary from one series of Index Fund Shares to another, but generally will be of substantial size (*e.g.,* value in excess of $450,000 per Creation Unit). It is expected that a Fund will issue and sell Index Fund Shares through a principal underwriter (''Distributor'') on a continuous basis at the net asset value per share next determined after an order to purchase Index Fund Shares in Creation Unit size aggregations is received in proper form. Following issuance, Index Fund Shares would be traded on the Exchange like other equity securities, and Amex equity trading rules would apply to the trading of Index Fund Shares.

The Exchange expects that Creation Unit size aggregations of Index Fund Shares generally will be issued in exchange for the ''in kind'' deposit of a specified portfolio of securities (''Deposit Securities''), together with a cash payment representing, in part, the amount of dividends accrued up to the time of issuance. The Exchange anticipates that such deposits will be made primarily by institutional investors, arbitragers, and the Exchange specialist. Redemption of Index Fund Shares generally will be made ''in kind,'' with a portfolio of securities and cash exchanged for Index Fund Shares that have been tendered for redemption. Issuances or redemptions also could occur for cash under specified circumstances (*e.g.,* if it is not possible to effect delivery of securities underlying the specific series in a particular foreign country) and at other times in the discretion of the Fund.

The Amex expects that a Fund will make available on a daily basis a list of the names and the required number of shares of each of the securities to be deposited in connection with issuance of Index Fund Shares of a particular series in Creation Unit size aggregations, as well as information relating to the required cash payment representing, in part, the amount of accrued dividends.

---

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] In Amendment No. 1, the Amex states that any broker-dealer handling transactions for customers in ''World Equity Benchmark Securities'' (or ''WEBS'') will have an obligation to deliver to such customers a prospectus regarding WEBS pursuant to the requirements of the Securities Act of 1933. Amendment No. 1 also states that prior to listing series of Index Fund Shares for indices other than those described in the present rule filing, it will make an appropriate filing pursuant to Rule 19b–4 under the Act. Letter from James F. Duffy, Executive Vice President and General Counsel, Legal and Regulatory Policy, Amex, to Michael Walinskas, Branch Chief, Office of Market Supervision (''OMS''), Division of Market Regulation (''Division''), Commission, dated November 14, 1995 (''Amendment No. 1'').

[4] Securities Exchange Act Release No. 36527, (November 29, 1995), 60 FR 62513.

[5] Amendment No. 2 provides additional information regarding the structure of Index Fund Shares, and revises the minimum number of such shares that must be outstanding prior to the commencement of trading. Amendment No.2 also includes criteria fro initial listing, a description of the dissemination of portfolio information, a provision for original and annual listing fees, a modification affecting stop and stop limit orders, a modification of minimum fractional changes, an Amendment to Amex Rule 190 (Specialist's Transactions with Public Customers), and effects a technical change to proposed Amex Rule 1000A. Letter from James F. Duffy, Executive Vice President and General Counsel, Legal & Regulatory Policy, Amex, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated March 6, 1996 (''Amendment No. 2'').

[6] Amendment No. 3 clarifies that WEBS will trade until 4:00 p.m., not 4:15 p.m. as originally proposed; revises the proposal with respect to trading halts; and provides information regarding the dissemination of net asset values (''NAVs''). Letter from James F. Duffy, Executive Vice President and General Counsel, Legal & Regulatory Policy, Amex, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated March 7, 1996 (''Amendment No. 3'').

A Fund may make periodic distributions of dividends from net investment income, including net foreign currency gains, if any, in an amount approximately equal to accumulated dividends on securities held by the Fund during the applicable period, net a expenses and liabilities for such period.

Index Fund Shares will be registered in book entry form through The Depository Trust Company. Trading in Index Fund Shares on the Exchange may be effected until 4:15 p.m. (New York time) each business day.

The Exchange's proposal seeks specifically to list Index Fund Shares that will be series of World Equity Benchmark Shares (''WEBS'') issued by Foreign Fund, Inc., and based on the following seventeen Morgan Stanley Capital International (''MSCI'') Indices (each individually an ''MSCI Index'' or ''Index'' and collectively ''MSCI Indices'' or ''Indices''): MSCI Australia Index; MSCI Austria Index; MSCI Belgium Index; MSCI Canada Index; MSCI France Index; MSCI Germany Index; MSCI Hong Kong Index; MSCI Italy Index; MSCI Japan Index; MSCI Malaysia Index; MSCI Mexico Index; MSCI Netherlands Index; MSCI Singapore (Free) Index; MSCI Spain Index; MSCI Sweden Index; MSCI Switzerland Index; and MSCI United Kingdom Index (Each a ''WEBS series'' or ''Index Series'').[7]

Foreign Fund, Inc. will issue and redeem WEBS of each Index Series only in aggregations of shares specified for each Index Series. The following table sets forth the number of shares of an Index Series that it is anticipated will constitute a Creation Unit for such Index Series:

Index series	Shares per creation unit
Australia Index Series	200,000
Austria Index Series	100,000
Belgium Index Series	40,000
Canada Index Series	100,000
France Index Series	200,000
Germany Index Series	300,000
Hong Kong Index Series	75,000
Italy Index Series	150,000
Japan Index Series	600,000
Malaysia Index Series	75,000
Mexico Index Series	100,000
Netherlands Index Series	50,000
Singapore (Free) Index Series	100,000
Spain Index Series	75,000
Sweden Index Series	75,000
Switzerland Index Series	125,000
United Kingdom Index Series	200,000

The Exchange anticipates that the value of a Creation Unit at the start of trading will range from $450,000 to $10,000,000, and the NAV of an individual WEBS will range from $10 to $20.[8]

As noted in the Foreign Fund, Inc. preliminary prospectus,[9] the investment objective of each WEBS series is to seek to provide investment results that correspond generally to the price and yield performance of public securities traded in the aggregate in particular markets, as represented by specific MSCI Indices. Each WEBS series will use a ''passive'' or indexing investment approach which attempts to approximate the investment performance of its benchmark index through quantitative analytical procedures.[10]

A WEBS series normally will invest at least 95% of its total assets in stocks that are represented in the relevant MSCI Index and will at all times invest at least 90% of its total assets in such stocks. A WEBS series will not hold all of the issues that comprise the subject MSCI Index, but will attempt to hold a representative sample of the securities in the Index in a technique known as ''portfolio sampling.'' [11] Nevertheless, each WEBS series currently is expected to have an approximate weighted capitalization relative to the capitalization of its benchmark MSCI Index, ranging from 82.6% for the Mexico (Free) series, to 98.5% for the Sweden series.[12]

It is expected that, over time, the ''expected tracking error'' of a WEBS series relative to the performance of the relevant MSCI Index will be less than 5%. An expected tracking error of 5% means that there is a 68% probability that the net asset value for the WEBS series will be between 95% and 105% of the subject MSCI Index after one year without rebalancing the portfolio composition, While no particular level of tracking error is assured, the Fund advisor, BZW Global Fund Advisors, will monitor the tracking error of each WEBS series on an ongoing basis and will seek to minimize tracking error to the maximum extent possible. Semi-annual and annual reports of the Fund will disclose tracking error over the previous six month periods, and in the event that tracking error exceeds 5%, the Fund board of directors will consider what action might be appropriate.[13]

B. The MSCI Indices [14]

1. General

MSCI generally seeks to have 60% of the capitalization of a country's stock market reflected in the MSCI Index for such country. Thus, the MSCI Indices seek to balance the inclusiveness of an ''all share'' index against the replicability of a ''blue chip'' index. MSCI applies the same criteria and calculation methodology across all markets for all indices, developed and emerging.

2. Weighting

All single-country MSCI Indices are market capitalization weighted, *i.e.*, companies are included in the indices at their full market value (total number of shares issued and paid up, multiplied by price). For countries that restrict foreign ownership, MSCI calculates two Indices. The additional Indices are called ''free'' Indices, and they exclude companies and share classes not purchasable by foreigners. Free Indices currently are calculated for Singapore, Mexico, the Philippines, and Venezuela, and for those regional and international indices which include such markets. The Mexico and Singapore WEBS series will be based on the free Indices for those countries. There are no WEBS series corresponding to the Philippines and Venezuela MSCI Indices.[15]

3. Selection Criteria

The constituents of a country index are selected from the full range of securities available in the market, excluding issues which are either small or highly illiquid. Non-domiciled companies and investment trusts are also excluded from consideration. After the index constituents are chosen, they are reclassified using MSCI's schema of

[7] The Exchange has stated that it will make an appropriate filing pursuant of Rule 19b–4 under the Act prior to listing series of Index Fund Shares for indices other than those described in the present proposal. Amendment No. 1, *supra* note 3.

[8] *See* Amendment No. 2, *supra* note 5. The Commission notes that if in the future the number of shares per Creation Unit of a WEBS series were to be changed, or the value of a Creation Unit were to fall significantly, such a change could require the filing of a proposed rule change by the Exchange pursuant to Section 19(b) of the Act.

[9] *See* Form N–1A Registration Statement submitted under the Securities Act of 1933 and the Investment Company Act of 1940, Registration Nos. 33–97598; 811–9102.

[10] Amendment No. 2, *supra* note 5.

[11] *Id.*

[12] Letter from Donald R. Crawshaw, Sullivan & Cromwell, on behalf of Foreign Fund, Inc., to Nancy J. Sanow, Assistant Director, Office of Trading Practices, Automation & International Markets, Commission, dated March 1, 1996 (data as of February 26, 1996).

[13] Amendment No. 2, *supra* note 5.

[14] Information regarding the MSCI Indices was furnished by Foreign Fund, Inc.

[15] *See* Form N–1A, *supra* note 9.

38 industries and eight economic sectors to facilitate cross-country comparisons.

The process of choosing index constituents from the universe of available securities is consistent among indices. Determining the constituents of an index is an optimization process which involves maximizing float and liquidity, reflecting accurately the market's size and industry profiles, and minimizing cross-ownership.

To reflect accurately country-wide performance, MSCI aims to capture 60% of total market capitalization at both the country and industry level. To reflect local market performance, an index should contain a percentage of the market's overall capitalization sufficient to achieve a high level of tracking. The greater the coverage, however, the greater the risk of including securities which are illiquid or have restricted float. MSCI's 60% coverage target seeks to balance these considerations.

MSCI attempts to meet its 60% coverage target by including a representative sample of large, medium and small capitalization stocks, to capture the sometimes disparate performance of these sectors. In the emerging markets, the liquidity of smaller issues can be a constraint. At the same time, properly representing the lower capitalization end of the market risks overwhelming the index with components. Within these constraints, MSCI strives to include smaller capitalization stocks, provided they exhibit sufficient liquidity.

4. Calculation Methodology

All MSCI Indices are calculated daily using Laspeyres' concept of a weighted arithmetic average together with the concept of ''chain-linking,'' a classical method of calculating stock market indices. The Laspeyres method weights stocks in an index by their beginning-of-period market capitalization. Share prices are ''swept clean'' daily and adjusted for any rights issues, stock dividends or splits. The MSCI Indices currently are calculated in local currency and in U.S. dollars, without dividends and with gross dividends reinvested (*e.g.,* before withholding taxes).

5. Price and Exchange Rates

Prices used to calculate the MSCI Indices are the official exchange closing prices. All prices are taken from the dominant exchange in each market. In countries where there are foreign ownership limits, MSCI uses the price quoted on the official exchange, regardless of whether the limit has been reached.

To calculate the applicable foreign currency exchange rate, MSCI uses WM/Reuters Closing Spot Rates for all developed and emerging markets except those in Latin America. The WM/Reuters Closing Spot Rates were established by a committee of investment managers and data providers, including MSCI, whose object was to standardize foreign currency exchange rates used by the investment community. Exchange rates are taken daily at 4 p.m. London time by the WM Company and are sourced whenever possible from multi-contributor quotes on Reuters. Representative rates are selected for each currency based on a number of ''snapshots'' of the latest contributed quotations taken from the Reuters service at short intervals around 4 p.m. WM/Reuters provides closing bid and offer rates. MSCI uses these to calculate the mid-point to 5 decimal places. Because of the high volatility of currencies in some Latin American countries, MSCI continues to use its own timing and source for these markets. MSCI continues to monitor exchange rates independently and may, under exceptional circumstances, elect to use an alternative exchange rate if the WM/Reuters rate is believed not to be representative for a given currency on a particular day.

6. Changes to the Indices

In changing the constituents of the Indices, MSCI attempts to balance representativeness versus undue turnover. An Index must represent the current state of an evolving marketplace, yet minimize turnover, which is costly as well as inconvenient for managers.

There are two broad categories of changes to the MSCI Indices. The first consists of market-driven changes such as mergers, acquisitions, and bankruptcies. These are announced and implemented as they occur. The second category consists of structural changes to reflect the evolution of a market, including changes in industry composition or regulations. Structural changes may occur only on four dates during the year: the first business days of March, June, September and December. They are preannounced at least two weeks in advance.

Restructuring an Index involves a balancing of additions and deletions. To maintain continuity and minimize turnover, MSCI is reluctant to delete Index constituents, and its approach to additions is correspondingly stringent. As markets grow because of privatizations, investor interest, or the relaxation of regulations, Index additions (with or without corresponding deletions) may be needed to bring industry representations up to the 60% target. Companies are considered not only with respect to their broad industry, but also with respect to their subsector, so as to reflect if possible a broader range of economic activity. Beyond industry representativeness, new constituents are selected based on the criteria discussed above, i.e. float, liquidity, cross-ownership, etc.

In general, new issues are not eligible for immediate inclusion in the MSCI Indices because their liquidity remains unproven. Usually, new issues undergo a ''seasoning'' period of one year to 18 months between index restructurings until a trading pattern and volume are established. After that time, they are eligible for inclusion, subject to the criteria discussed above.

Companies may be deleted because they have diversified away from their industry classification, because the industry has evolved in a different direction from the company's thrust, or because a better industry representative exists (either a new issue or an existing company). In addition, in order not to exceed the 60% target coverage of industries and countries, adding new Index companies may entail corresponding deletions. Usually such deletions take place within the same industry, but there are occasional exceptions.

7. Dissemination

Each MSCI Index on which a WEBS series is based is calculated by MSCI for each trading day in the applicable foreign exchange market based on official closing prices in such exchange market. For each trading day, MSCI publicly disseminates each Index value for the previous day's close. MSCI Indices are reported periodically in major financial publications and also are available through vendors of financial information.[16]

Foreign Fund, Inc. also will cause to be made available daily the names and required number of shares of each of the securities to be deposited in connection with the issuance of WEBS in Creation Unit size aggregations for each WEBS series, as well as information relating to the required cash payment representing, in part, the amount of accrued dividends applicable to such WEBS series. This information will be made available by the Fund Advisor to any National Securities Clearing Corporation (''NSCC'') participant requesting such information. In addition, other investors can request such information directly

[16] Amendment No. 2, *supra* note 5.

from the Fund distributor, Funds Distributor, Inc. The NAV for each WEBS series will be calculated daily by the Fund administrator, PFPC Inc.[17]

To provide current WEBS pricing information for use by investors, professionals, and persons wishing to create or redeem WEBS, the Exchange anticipates it will disseminate through the facilities of the Consolidated Tape Association an updated ''indicative optimized portfolio value'' (''Value'') for each WEBS series as calculated by Bloomberg, L.P. (''Bloomberg''). The Value will be disseminated on a per WEBS basis every 15 seconds during regular Amex trading hours of 9:30 a.m. and 4:00 p.m. New York time. The equity securities value that will be included in the Value will be the values of the Deposit Securities constituting an optimized representation of the benchmark MSCI Index for each WEBS series, which is the same as the portfolio that generally will be used in connection with creations and redemptions of WEBS in Creation Unit size aggregations on that day. The equity securities included in the Value will reflect the same market capitalization weighting as the Deposit Securities in the optimized portfolio for the particular WEBS series. In addition to the value of the Deposit Securities for each WEBS series, the Value will include a cash component consisting of estimated accrued dividend and other income, less expenses. The Value also will reflect changes in currency exchange rates between the U.S. dollar and the applicable home foreign currency.[18]

The Value likely will not reflect the value of all securities included in the applicable benchmark MSCI Index. In addition, the Value will not necessarily reflect the precise composition of the current portfolio of securities held by the Fund for each WEBS series at a particular moment. Therefore, the Value on a per WEBS basis disseminated during Amex trading hours should not be viewed as a real time update of the net asset value of the Fund, which is calculated only once a day. While the Value disseminated by the Amex at 9:30 a.m. is expected to be very close to the most recently calculated Fund net asset value on a per WEBS basis,[19] it is possible that the value of the portfolio of securities held by the Fund for a particular WEBS series may diverge from the Deposit Securities values during any trading day. In such case, the Value will not precisely reflect the value of the Fund portfolio. Following calculation of NAV by the Fund administrator as of 4:00 p.m. New York time, it is expected that the Value on a per WEBS basis would be the same as the NAV of the Fund on a per WEBS basis. It is expected, however, that during the trading day, the Value will closely approximate the value per WEBS share of the portfolio of securities for each WEBS series except under unusual circumstances (*e.g.,* in the case of extensive rebalancing of multiple securities in a WEBS series at the same time by the Fund advisor).[20]

The Exchange believes that dissemination of the Value based on the Deposit Securities will provide additional information regarding each WEBS series that is not otherwise available to the public and that will be useful to professionals and investors in connection with WEBS trading on the Exchange or the creation or redemption of WEBS.[21]

For Australia, Japan, Malaysia, Hong Kong, and Singapore (Free) WEBS series, there is no overlap in trading hours between the foreign markets and the Amex. Therefore, for each of these WEBS series, the disseminated Value will be based upon closing prices, denominated in the applicable foreign currency price, in the principal foreign market for securities in the WEBS portfolio, and converted to U.S. dollars. This value will be updated every 15 seconds during Amex trading hours to reflect changes in currency exchange rates between the U.S. dollar and the applicable foreign currency. The estimated portfolio value also will include the applicable estimated cash component for each WEBS series.[22]

For the Europe, Canada, and Mexico WEBS series where there is an overlap in the trading hours between the foreign market and the Amex, the disseminated Value will be updated every 15 seconds and will reflect price changes in the principal foreign market, converted into U.S. dollars based on the current currency exchange rate. When the foreign market is closed but the Amex is open, the Value will be updated every 15 seconds to reflect changes in currency exchange rates after the foreign market closes. The estimated portfolio value also will include the applicable estimated cash component.[23]

C. Criteria for Initial and Continued Listing

In connection with initial listing, the Exchange will establish a minimum number of Index Fund Shares required to be outstanding at the time of commencement of Exchange trading. For the Japan series, a minimum of the equivalent of one Creation Unit will be required to be outstanding at the start of trading. For each of the other series of Index Fund shares, the Exchange anticipates that a minimum of two Creation Units in Fund Shares would be required to be outstanding before trading could begin.[24]

Each series of Index Fund Shares will be subject to the initial and continued listing criteria of proposed Amex Rule 1002A(b) which provides that following the initial twelve month period following commencement of Exchange trading of a series of Index Fund Shares, the Exchange will consider suspension of trading in, or removal from listing of, such series under any of the following circumstances:

(a) if there are fewer than 50 beneficial holders of the series of Index Fund Shares for 30 or more consecutive trading days; or

(b) if the value of the index or portfolio of securities on which the series of Index Fund Shares is based is no longer calculated or available; or

(c) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.[25]

The Exchange will require that Index Fund Shares be removed from listing upon termination of the Fund that issued such shares.

[17] *Id.* NAVs will be made available to the public from the Fund distributor by means of a toll-free number, and also will be available to NSCC participants through data made available from NSCC. Amendment No. 3, *supra* note 6.

[18] Amendment No. 2, *supra* note. 5.

[19] A slight difference between the Value disseminated at 9:30 and the most recently calculated Fund NAV can be expected because the Value will include an estimated cash amount consisting principally of any dividend accruals for the Deposit Securities going ''ex-dividend'' on that day.

[20] Amendment No. 2, *supra* note 5.

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Cf., supra* note 8.

[25] The Commission notes that the preliminary prospectus states that each WEBS series will at all times invest at least 90% of its total assets in securities that are represented in the relevant MSCI Index, and normally will invest 95% of its total assets in such securities. In addition, each WEBS series has a policy to concentrate its investments in an industry or industries if, and to the extent that, its corresponding MSCI Index concentrates in such industry or industries, except where the concentration is the result of a single security. *See* Form N–1A, *supra* note 9. While the Commission believes these requirements should help to reduce concerns that the WEBS could become a surrogate for trading in a single or a few unregistered stocks, in the event that a series of WEBS were to become such a surrogate, the Commission would expect the Amex to take action immediately to delist the securities to ensure compliance with the Act.

D. Specialists

Amex Rule 190(a) provides that a specialist may not directly or indirectly effect any business transaction with a company or any officer, director or 10% stockholder of a company in which stock the specialist is registered. To clarify its interpretation of Rule 190(a) with respect to specialist creation and redemption activity in such listed securities as Index Fund Shares, as well as Portfolio Depositary Receipts listed under Amex Rule 1000, the Exchange proposes to add Commentary .04 to Rule 190. Proposed Commentary .04 would provide that nothing under the provisions Amex Rule 190(a) will be deemed to restrict a specialist registered in a security issued by an investment company from purchasing and redeeming the listed security, or securities that can be subdivided or converted into the listed security, from the issuer as appropriate to facilitate the maintenance of a fair and orderly market in the subject security. In addition, the specialist, will be able to engage in creations and redemptions of WEBS only according to the same terms and conditions as every other investor at net asset value, in accordance with the terms of the Fund prospectus and statement of additional information. The Amex believes that this will minimize the potential for abuse.[26]

E. Disclosure

With respect to investor disclosure, the Exchange notes that, pursuant to the requirements of the Securities Act of 1933, as amended (''1933 Act''), all investors in Index Fund Shares, including WEBS, will receive a prospectus. Because the Units will be in continuous distribution, the prospectus delivery requirements of the 1933 Act will apply to all investors in Index Fund Shares, including secondary market purchases on the Amex in WEBS. The prospectus and all marketing material will refer to WEBS by using the term ''investment company.'' 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 Investment Company Act Form N–1A. In addition, the cover page of the prospectus will include a distinct paragraph stating that WEBS will not be individually redeemable.[27]

Prior to commencement of trading of a series of Index Fund Shares, the Exchange will distribute to Exchange members and member organizations an Information Circular calling attention to characteristics of the specific series and to applicable Exchange rules. That circular will inform member organizations of their responsibilities under Exchange Rule 411 (''know your customer rule'') with respect to transactions in such Index Fund Shares. The circular will inform member organizations of their responsibility to deliver a prospectus to all investors purchasing WEBS. The Amex has stated that any broker-dealer handling transactions for customers in WEBS will have an obligation to delivery to such customers a prospectus regarding WEBS pursuant to the requirements of the Securities Act of 1933.[28] The circular also will note that WEBS are not individually redeemable; they may be redeemed in Creation Unit size aggregations only.

F. Trading Halts

Prior to commencement of trading in Index Fund Shares, the Exchange will issue a circular to members informing them of Exchange policies regarding trading halts in such securities. The circular will make clear that, in addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Rule 918C(b) in exercising its discretion to halt or suspend trading. These factors would include: (1) whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the applicable current index group value; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[29]

G. Listing Fees

The Amex proposes an original listing fee for WEBS of $5,000 per series (*i.e.*, $85,000 for the seventeen WEBS series herein described). In addition, the annual listing fee applicable to WEBS series under Section 141f the Amex *Company Guide* will be based upon the year-end aggregate number of outstanding WEBS in all series, except that no annual listing fee will be assessed for calendar year 1996.[30]

H. Stop and Stop Limit Orders

Amex Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Rule 950(f) and Commentary thereto) the price of which is derivatively priced based upon another security or index of securities, may, with the prior approval of a Floor Official, be elected by a quotation, as set forth in Rule 154, Commentary .04(c)(i–iv). The Exchange proposes to designate Index Fund Shares, including WEBS, as eligible for this treatment.[31]

I. Minimum Fractional Change

Under Amex Rule 127, the minimum fractional change for securities traded on the Amex is 1⁄16 of $1.00 for securities selling at $10.00 and over. The Exchange proposes to add Commentary .02 to Rule 127 to provide that, for Index Fund Shares that would be listed under proposed Rule 1000A *et seq.*, including WEBS, the minimum fractional change will be 1⁄16 of $1.00. Thus, proposed Commentary .02 would accommodate trading in sixteenths for shares of WEBS series selling at $10.00 and over, as well as under $10.00. The Intermarket Trading System (''ITS'') accommodates trading in sixteenths only for Amex securities priced below $10.00. In the event another ITS participant market seeks to initiate WEBS trading through ITS, the Exchange would discuss with the ITS Operating Committee appropriate modifications to ITS to permit trading of Index Fund Shares, including WEBS, in sixteenths for shares priced above $10.00, and would make reasonable efforts to address issues raised by such prospective trading.[32]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5) of the Act.[33] The Commission believes that the Exchange's proposal to list and trade Index Fund Shares, and specifically WEBS, will provide investors with a convenient way of participating in foreign securities markets. The Exchange's proposal should help to provide investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell securities at negotiated prices throughout the business day that

[26] Amendment No. 2, *supra* note 5.

[27] *See* Form N–1A, *supra* note 9.

[28] Amendment No. 1, *supra* note 3. The Exchange states that it may, in the future, seek to obtain an exemption from the prospectus delivery requirement, either with respect to WEBS or other series of Index Fund Shares listed on the Exchange. *Id.* In the event it obtains such an exemption, the Exchange will discuss with Commission staff the appropriate level of disclosure that should be required with respect to the Index Fund Shares being listed, and will file any necessary rule change to provide for such disclosure.

[29] Amendment No. 3, *supra* note 6.

[30] Amendment No. 2, *supra* note 5.

[31] *Id.*

[32] *Id.*

[33] 15 U.S.C. 78f(b)(5) (1988).

replicate the performance of several portfolios of stocks.[34] Accordingly, the Commission finds that the Exchange's proposal will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[35]

The estimated cost of an individual WEBS, approximately $10 to $20, should make it attractive to individual retail investors who wish to hold a security replicating the performance of a portfolio of foreign stocks. Moreover, the Commission believes that WEBS will provide investors with several advantages over standard open-end investment companies specializing in such stocks. In particular, investors will be able to trade WEBS continuously throughout the business day in secondary market transactions at negotiated prices.[36] In contrast, Investment Company Rule 22c–1 [37] limits holders and prospective holders of open-end investment company shares to purchasing or redeeming securities of the fund based on the net asset value of the securities held by the fund as designated by the board of directors. Accordingly, WEBS should allow investors to: (1) Respond quickly to market changes through intra-day trading opportunities; (2) engage in hedging strategies not currently available to retail investors; and (3) reduce transaction costs for trading a portfolio of securities.

Although the value of WEBS will be based on the value of the securities and cash held in the Fund, WEBS are not leveraged instruments.[38] In essence, WEBS are equity securities that represent an interest in a portfolio of stocks designed to reflect substantially the applicable MSCI Index. Accordingly, it is appropriate to regulate WEBS in a manner similar to other equity securities. Nevertheless, the Commission believes that the unique nature of WEBS raise certain product design, disclosure, trading, and other issues that must be addressed.

A. WEBS Generally

The Commission believes that the proposed WEBS are reasonably designed to provide investors with an investment vehicle that substantially reflects in value the index it is based upon, and, in turn, the performance of the specified foreign equities market. In this regard, the Commission notes that MSCI imposes specific criteria in the selection of Index components. MSCI generally seeks to have 60% of a market's capitalization reflected in that market's corresponding Index. In selecting components for a given Index, MSCI excludes issues that are either small or highly illiquid. Index constituents are selected on the basis of seeking to maximize float and liquidity, reflecting a market's size and industry profiles, and minimizing cross-ownership.

The aim of this component selection process is to make Index components highly representative of the over-all economic sector make-up and market capitalization of a given market. At the same time, securities that are illiquid or that have a restricted float are avoided. The Commission believes that these criteria should serve to ensure that the underlying securities of these Indices are well capitalized and actively traded.

The Commission also notes that the WEBS' investment policies require that at all times at least 90% of a given series total assets must be invested in stocks that are represented in the relevant MSCI Index. Moreover, a WEBS series normally will invest at least 95% of its total assets in such stocks. In addition, stocks are selected for inclusion in a WEBS series in order to have aggregated investment characteristics (based on market capitalization and industry weightings), fundamental characteristics (such as return variability, earnings valuation and yield) and liquidity measures similar to those of the subject MSCI Index taken in its entirety. Hence, the Fund Advisor will seek to construct the portfolio of each WEBS series so that, in the aggregate, its capitalization, industry, and fundamental investment characteristics perform like those of the subject MSCI Index.[39]

As noted above, to comply with these investment policies, a WEBS series will not hold all of the securities that comprise the subject MSCI Index, but will attempt to hold a representative selection of such securities by means of ''portfolio sampling.'' Nevertheless, each WEBS series currently is expected to have an approximate weighted capitalization relative to the capitalization of its benchmark MSCI Index, ranging from 82.6% for the Mexico (Free) series, to 98.5% for the Sweden series.[40] Moreover, no WEBS series currently is expected to have fewer than seventeen of the component securities of the corresponding MSCI Index.[41] The Commission believes that taken together, the foregoing are adequate to characterize WEBS as *bona fide* index funds. The Commission would be concerned, however, if the capitalization percentages or minimum number of WEBS component securities were to fall to a level such that the WEBS portfolios no longer would substantially reflect their corresponding WEBS Indices.[42]

B. Disclosure

The Commission believes that the Exchange's proposal should ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading Index Fund Shares, including

[34] The Commission notes that unlike typical open-end investment companies, where investors have the right to redeem their fund shares on a daily basis, investors in Index Fund Shares, including WEBS, could redeem them in Creation Unit size aggregations only.

[35] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging or other economic functions, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[36] Because of potential arbitrage opportunities, the Commission believes that WEBS will not trade at a material discount or premium in relation to their net asset value. The mere potential for arbitrage should keep the market price of WEBS comparable to their net asset values; therefore, arbitrage activity likely will not be significant. In addition, the Fund will redeem in-kind, thereby enabling the Fund to invest virtually all of its assets in securities comprising the MSCI Indices.

[37] 17 CFR 270.22c–1 (1994). Investment Company Act Rule 22c–1 generally provides that a registered investment company issuing a redeemable security, its principal underwriter, and dealers in that security may sell, redeem, or repurchase the security only at a price based on the net asset value next computed after receipt of an investor's request to purchase, redeem, or resell. The net asset value of an open-end investment company generally is computed once daily Monday through Friday as designated by the investment company's board of directors. The Commission granted WEBS an exemption from this provision to allow them to trade in the secondary market at negotiated prices. *See* Investment Company Act Release No. 21803; International Series Release No. 944, March 5, 1996.

[38] In contrast, proposals to list exchange-traded derivative products that contain a built-in leverage feature or component raise additional regulatory issues, including heightened concerns regarding manipulation, market impact, and customer suitability. *See e.g.,* Securities Exchange Act Release No. 36165 (August 29, 1995), 60 FR 46653 (relating to the establishment of uniform listing and trading guidelines for stock index, currency, and currency index warrants).

[39] *See* Form N–1A, *supra* note 9.

[40] Letter from Donald R. Crawshaw, *supra* note 12.

[41] *Id.*

[42] Among other issues that may arise under the federal securities laws, such an occurrence could raise the issue of whether WEBS trading would remain consistent with Amex listing standards for Index Fund Shares, as well as the surrogate trading issue noted above. *See supra* note 25.

WEBS.[43] As noted above, all Fund Share investors will receive a prospectus regarding the product. Because Index Fund Shares, including WEBS, will be in continuous distribution, the prospectus delivery requirements of the Securities Act of 1933 will apply both to initial investors, and to all investors purchasing such securities in secondary market transactions on the Amex. The prospectus will address the special characteristics of a particular Index Fund Share series, including a statement regarding its redeemability and method of creation. With respect to WEBS, the prospectus will state specifically that WEBS individually are not redeemable.

The Commission also notes that upon the initial listing of any class of Index Fund Shares, including WEBS, the Exchange will issue a circular to its members explaining the unique characteristics and risks of this type of security. The circular also will note Exchange members' responsibilities under Exchange Rule 411 (''know your customer rule'') regarding transactions in such Index Fund Shares. Exchange Rule 411 generally requires that members use due diligence to learn the essential facts relative to every customer, every order or account accepted.[44] The circular also will address members' responsibility to deliver a prospectus to all investors as well as highlight the characteristics of purchases in Index Fund Shares, including WEBS, including that they only are redeemable in Creation Unit size aggregations.

C. Trading of WEBS

The Commission finds that adequate rules and procedures exist to govern the trading of Index Fund Shares, including WEBS. Index Fund Shares will be deemed equity securities subject to Amex rules governing the trading of equity securities.[45] These rules include: General and Floor Rules, such as priority, parity, and precedence of orders, market volatility related trading halt provisions pursuant to Rule 117, members dealing for their own accounts, specialists, odd-lot brokers, and registered traders, and handling of orders and reports;[46] Office Rules, such as conduct of accounts, margin rules, and advertising;[47] and Contracts in Securities, such as duty to report transactions, comparisons of transactions, marking to the market, delivery of securities, dividends and interest, closing of contracts, and money and security loans.[48] The Amex also will consider halting trading in any series of Index Funds Shares under certain other circumstances including those set forth in Amex Rule 918C(b)(4) regarding the presence of other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market.[49]

The Commission is satisfied with the Amex's development of specific listing and delisting criteria for Index Fund Shares. These criteria should help to ensure that a minimum level of liquidity will exist in each series of Index Fund Shares to allow for the maintenance of fair and orderly markets. The delisting criteria also allows the Exchange to consider the suspension of trading and the delisting of a series of Index Fund Shares, including WEBS, if an event were to occur that made further dealings in such securities inadvisable. This will give the Exchange flexibility to delist Index Fund Shares, including WEBS, if circumstances warrant such action. For example, as noted above, in the event that WEBS became a surrogate for trading a single or few unregistered securities, such an event could raise issues that would require delisting of WEBS so as to ensure compliance with the Act.[50] Accordingly, the Commission believes that the rules governing the trading of Index Fund Shares provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

D. Dissemination of WEBS Portfolio Information

The Commission believes that the Values the Exchange proposes to have disseminated for the seventeen WEBS series will provide investors with timely and useful information concerning the value of WEBS on a per WEBS basis. The Exchange represents that the information will be disseminated through the facilities of the CTA and will reflect currently-available information concerning the value of the assets comprising the Deposit Securities. This information will be disseminated every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4:00 p.m., New York time. In addition, since it is expected that the Value will closely track the applicable WEBS series, the Commission believes that the Values will provide investors with adequate information to determine the intra-day value of a given WEBS series.[51] The Commission expects that the Amex will monitor the disseminated Value, and if the Amex were to determine that the Value does not closely track applicable WEBS series, it would arrange to disseminate an adequate alternative value.

E. Specialists

The Commission finds that it is consistent with the Act to allow a specialist registered in a security issued by an Investment Company to purchase or redeem the listed security from the issuer as appropriate to facilitate the maintenance of a fair and orderly market in that security. The Commission believes that such market activities should enhance liquidity in such securities and facilitate a specialist's market-making responsibilities. In addition, because the specialist only will be able to purchase and redeem Units on the same terms and conditions as any other investor at NAV in accordance with the terms of the Fund prospectus and statement of additional information, the Commission believes that concerns regarding potential abuse are minimized. The Exchange's existing surveillance procedures also should ensure that such purchases are only for the purpose of maintaining fair and orderly markets, and not for any other improper or speculative purposes. Finally, the Commission notes that its approval of this aspect of the Exchange's rule proposal does not address any other requirements or obligations under the federal securities laws that may be applicable.[52]

[43] The Exchange states that it may, in the future, seek to obtain an exemption from the prospectus delivery requirement, either with respect to WEBS or other Index Fund Shares listed on the Exchange. In the event it obtains such an exemption, the Exchange will discuss with Commission staff the appropriate level of disclosure that should be required with respect to the Index Fund Shares being listed, and will file any necessary rule change to provide for such disclosure.

[44] Amex Rule 411.

[45] Telephone Conversation between Michael Cavalier, Assistant General Counsel, Amex, and Francois Mazur, Attorney, OMS, Division, Commission, on March 4, 1996.

[46] Amex Rules 1–236.

[47] Amex Rules 300–590.

[48] Amex Rules 700–891.

[49] *See supra* note 29, and accompanying text.

[50] *See supra* note 25.

[51] In addition, the statement of additional information to the preliminary prospectus states that each series will calculate its NAV per share at the close of the regular trading session for the New York Stock Exchange, Inc. on each day that the Exchange is open for business. NAV generally will be based on the last quoted sales price on the exchange where the security primarily is traded. Form N–1A, *supra* note 9. *See also* note 17, *supra*, discussing availability of NAV.

[52] Broker dealers and other persons will be cautioned in the prospectus and/or the Fund's statement of additional information 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.

F. Surveillance

The Commission believes that the surveillance procedures developed by the Amex for WEBS are adequate to address concerns associated with the listing and trading of such securities, including any concerns associated with purchasing and redeeming Creation Units.

The Commission also notes that certain concerns are raised when a broker-dealer, such as Morgan Stanley & Co. Incorporated (''Morgan Stanley''), is involved in the development and maintenance of a stock index upon which a product such as Index Fund Shares, in this case WEBS, is based. The Indices were created by MSCI, which also is responsible for making substitutions and other adjustments to the Indices. Responsibility for making substitutions and other adjustments to the Indices has been delegated to Capital International S.C. (''CIPSA''), which in turn is a subsidiary of Capital International S.A. (''CISA''), itself a subsidiary of The Capital Group. Morgan Stanley represents that the individuals employed by CIPSA are not involved in sales and trading for Morgan Stanley or in equity research. Information provided by CIPSA concerning the Indices is made available to MSCI and Morgan Stanley at the same time it becomes available to other market participants. Moreover, as discussed above, WEBS series will not hold all the securities underlying a corresponding MSCI Index, holding instead a representative sampling of such securities. In addition, Morgan Stanley, CISA, and CIPSA each have procedures in place to prevent the misuse of material, non-public information regarding changes to component stocks in an MSCI Index.[53] The Commission believes that these provisions should help to address concerns raised by Morgan Stanley's involvement in the management of the Indices.

G. Stop and Stop Limit Orders

The Commission believes that the Amex's proposal to designate Index Fund Shares, including WEBS, as eligible for election by quotation with the prior approval of a Floor Official is consistent with the Act. Amex Rule 154, Commentary .04(c) generally provides that stop and stop limit orders to buy or sell a security or index of securities may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Rule 154, Commentary .04(c)(1–v). Rule 154, Commentary .04(c)(v) states that election by quotation only is available for such derivative securities as are designated by the Exchange as eligible for such treatment. The Exchange's proposal would so designate Index Fund Shares.

The Commission believes that to allow stop and stop limit orders in Index Fund Shares to be elected by quotation, a rule typically used in the options context, is appropriate because, as a result of their derivative nature, Index Fund Shares are in effect equity securities that have a pricing and trading relationship to the underlying securities similar to the relationship between options and their underlying securities.[54]

H. Minimum Fractional Changes

The Commission believes that the Exchange's propsoal to add Commentary .02 to its Rule 127 to provide that Index Fund Shares, including WEBS, are tradeable in minimum fractional changes of 1/16 of $1.00 is consistent with the Act. In initially approving the trading of Portfolio Depositary Receipts (''PDRs'') in minimum fractional changes of 1/32 of $1.00, the Commission stated that such trading should enhance market liquidity, and should promote more accurate pricing, tighter quotations, and reduced price fluctuations.[55] The Commission also stated that such trading should allow customers to receive the best possible execution of their transactions in PDRs.[56] The Commission believes that this reasoning equally is applicable to Index Fund Shares, including WEBS.

Although Index Fund Shares, and specifically WEBS, initially will be listed on the Amex, the Commission notes that it is conceivable that other national securities exchanges or the National Association of Securities Dealers, Inc. could apply for authority to list and trade such products. Currently, however, the Intermarket Trading System (''ITS'') is not capable of accommodating quotes in 1/16th of $1.00 for securities priced over $10 (although ITS does accommodate quotes in 1/16th of $1.00 for securities priced below $10).[57] The Amex states that in the event another ITS participant market seeks to initiate WEBS trading through ITS, the Exchange will discuss with the ITS Operating Committee appropriate modifications to ITS to permit trading Index Fund Shares in 1/16 of $1.00 increments for shares priced at or above $10, and would make reasonable efforts to address issues raised by such prospective trading.[58] The Commission expects the Amex to work with ITS and other market participants in a timely manner to accommodate trading in sixteenths through ITS should other ITS participants seek to initiate WEBS trading.

I. Scope of the Commission's Order

The Commission is approving in general the Exchange's proposed listing standards for Index Fund Shares, and specifically the seventeen series of WEBS described herein. Other similarly structured products, including WEBS based on MSCI Indices not described herein, would require review by the Commission pursuant to Section 19(b) of the Act prior to being traded on the Exchange.

J. Accelerated Approval of Amendment Nos. 2 and 3

The Commission finds good cause for approving Amendment Nos. 2 and 3 prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. Amendment No. 2 provides additional information regarding the structure of Index Fund Shares. Amendment No. 2 also includes changes to the criteria for initial listing, a description of the dissemination of portfolio information, a provision for original and annual listing fees, a modification affecting stop and stop limit orders, a modification of minimum fractional changes, an Amendment to Amex Rule 190 (Specialist's Transactions with Public Customers), and effects a technical change to proposed Amex Rule 1000A. Amendment No. 3 clarifies that WEBS will trade until 4:00 p.m., not 4:15 p.m. as originally proposed; revises its proposal with respect to trading halts; and provides information regarding the dissemination of NAVs.

The Commission believes that the information presented by Amendment No. 2 concerning the criteria for initial listing is generally consistent with the Exchange's original proposal. The provision regarding WEBS portfolio compositions and the dissemination of portfolio compositions and the dissemination of portfolio values should strengthen the Exchange's proposal by

[53] Letter from Rachel Ascher, Vice President and Counsel, Morgan Stanley, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated March 6, 1996.

[54] *See generally* Securities Exchange Act Release No. 29063 (April 10, 1991), 56 FR 15652 (approving Amex proposal relating to stop and stop limit orders in certain equity securities).

[55] *See* Securities Exchange Act Release No. 31794 (January 29, 1993), 58 FR 7272 (order approving Amex proposal relating to minimum fractions of trading).

[56] *Id.*

[57] Amendment No. 2, *supra* note 5.

[58] *Id.*

providing investors with additional information. The technical change to proposed Amex Rule 1000A does not represent a material change. The Commission believes that the proposed original listing fee is reasonable and notes that no annual listing fees will be assessed for calendar year 1996. Finally, the other aspects of Amendment No. 2 concern issues that have been raised in prior Exchange proposals that have been the subject of a full comment period pursuant to Section 19(b) of the Act. The Commission believes that the trading hour provision of Amendment No. 3 does not represent a material change to the Exchange's original proposal and conforms WEBS trading hours to the Amex's regular trading hours. Amendment No. 3's trading halt provision clarifies the Exchange's proposal and makes it consistent with existing Exchange rules. Finally, the explanation regarding the dissemination of NAV clarifies what information will be made available to the public. For the foregoing reasons, the Commission believes there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act,[59] to approve Amendment Nos. 2 and 3 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 2 and 3. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–95–43 and should be submitted by April 14, 1996.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–Amex–95–43), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[60]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–6089 Filed 3–13–96; 8:45 am]

BILLING CODE 8010–01–M

[59] 15 U.S.C. 78f(b)(5) and 78s(b)(2) (1988).

[60] 17 CFR § 200.30–3(a)(12) (1994).

[Release No. 34–36945; File No. SR–GSCC–96–02]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Proposed Rule Change Modifying the Minimum Financial Criteria for Category One Interdealer Broker Netting Membership

March 7, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 13, 1996, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

GSCC proposes to modify its rules to reflect a new minimum financial criteria for category one interdealer broker membership in GSCC's netting system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified the text of the summaries prepared by GSCC.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

As a part of its continuous process of reviewing its membership criteria and overall risk management mechanism, GSCC seeks to enhance its minimum financial criteria for category one interdealer broker (''IDB'') membership in the netting system. Currently, GSCC has two categories of netting system membership for IDBs.

Category one IDBs act exclusively as brokers and trade only with netting members and for a temporary period established by the GSCC Board with certain ''grandfathered'' non-member firms.[3] Currently, the minimum financial requirement for category one IDBs is $4.2 million in excess net or liquid capital, as applicable.[4]

Category two IDBs have a minimum financial requirement of $25 million in net worth and $10 million in excess net or liquid capital, as applicable.[5] Unlike a category one IDB, a category two IDB is permitted to have up to ten percent of its business with non-netting members other than grandfathered non-members. This determination is based on the category two IDB's dollar volume of next-day and forward settling activity in eligible securities over the prior twenty business days.

GSCC's proposed rule change will modify the minimum financial requirement for category one IDBs to require $10 million in excess net or liquid capital, as applicable. GSCC believes that given the large dollar volume of activity that the IDBs have submitted and continue to submit to GSCC for netting and settlement and their principal nature vis-a-vis GSCC, it is appropriate to require that all IDBs have and maintain a minimum level of excess net or liquid capital of at least $10 million. Category one IDBs will

[3] Grandfathered non-members are non-members designated as such by the GSCC Board. GSCC publishes from time to time a list of such firms.

[4] If the applicant is registered with the Commission as a broker-dealer pursuant to Section 15 of the Act and is applying to become a category one IDB netting member, it must have net capital of at least $4.2 million. If the applicant is registered as a government securities broker pursuant to Section 15C of the Act and is applying to become a category one IDB netting member, it must have liquid capital of at least $4.2 million.

[5] If the applicant is registered with the Commission as a broker-dealer pursuant to Section 15 of the Act and is applying to become a category two IDB netting member, it must have net worth of at least $25 million and excess net capital of at least $10 million. If the applicant is registered with the Commission as a government securities broker pursuant to Section 15C of the Act and is applying to become a category two IDB netting member, it must have net worth of at least $25 million and excess liquid capital of at least $10 million.

continue to not have a minimum net worth requirement.

GSCC intends for this new capital requirement for category one IDBs [6] to become effective with the implementation of the second stage of netting services for repurchase and reverse repurchase transactions involving government securities as the underlying instrument (''repos'').[7] As of the filing of this proposed rule change, the Board of Directors of GSCC will no longer consider applications for category one IDB netting membership unless the IDB applicant has at least $10 million in excess net or liquid capital.[8]

GSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it will enhance GSCC's minimum financial criteria for membership in the netting system and strengthen its overall risk management process.[9]

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change have not yet been solicited or received. Members will be notified of the rule filing, and comments will be solicited by an important notice. GSCC will notify the Commission of any written comments received by GSCC.

[6] Presently, GSCC has only one category one IDB.

[7] For a complete description of GSCC's repo services to date, refer to Securities Exchange Act Release Nos. 35557 (March 31, 1995), 60 FR 17598 [File No. SR–GSCC–94–10] (order approving a proposed rule change relating to implementing a comparison service for repos) and 36491 (November 17, 1995), 60 FR 61577 [File No. SR–GSCC–95–02] (order approving a proposed rule change relating to netting services for non-same-day-settling aspects of next-day and term repos). GSCC anticipates the next stage of the repo services involving netting, settlement, and risk management of the open and close legs of brokered repo transactions will become effective later this year.

[8] GSCC Rule 3, Section 2 provides that the $4.2 million capital requirement is a minimum and that the GSCC Board of Directors may impose greater standards in view of the anticipated positions and obligations of the applicant, the anticipated risk associated with the volume and types of transactions the applicant proposes to process, and the overall financial condition of the applicant.

[9] 15 U.S.C. 78q–1 (1988).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR–GSCC–96–02 and should be submitted by April 4, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–6091 Filed 3–13–96; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Finding Regarding Foreign Social Insurance or Pension System—Croatia

AGENCY: Social Security Administration.

ACTION: Notice of Finding Regarding Foreign Social Insurance or Pension System—Croatia.

[10] 17 CFR 200.30–3(a)(12) (1995).

FINDING: Section 202(t)(1) of the Social Security Act (42 U.S.C. 402(t)(1)) prohibits payment of monthly benefits to any individual who is not a United States citizen or national for any month after he or she has been outside the United States for 6 consecutive months, and prior to the first month thereafter for all of which, the individual has been in the U.S. This prohibition does not apply to such an individual where one of the exceptions described in section 202(t)(2) through 202(t)(5) of the Social Security Act (42 U.S.C. 402(t)(2) through 402(t)(5)) affects his or her case.

Section 202(t)(2) of the Social Security Act provides that, subject to certain residency requirements of section 202(t)(11), the prohibition against payment shall not apply to any individual who is a citizen of a country which the Commissioner of Social Security finds has in effect a social insurance or pension system which is of general application in such country and which:

(a) Pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(b) Permits individuals who are United States citizens but not citizens of that country and who qualify for such benefits to receive those benefits, or the actuarial equivalent thereof, while outside the foreign country regardless of the duration of the absence.

The Commissioner of Social Security has delegated the authority to make such a finding to the Director of the Office of International Policy. Under that authority the Director of the Office of International Policy has approved a finding that Croatia, beginning April 1, 1992, has a social insurance system of general application which:

(a) Pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(b) Permits United States citizens who are not citizens of Croatia and who qualify for the relevant benefits to receive such benefits, or their actuarial equivalent, while outside of Croatia, regardless of the duration of the absence of these individuals from Croatia.

Accordingly, it is hereby determined and found that Croatia has in effect, beginning April 1, 1992, a social insurance system which meets the requirements of section 202(t)(2) of the Social Security Act (42 U.S.C. 402(t)(2)).

This is our first finding under section 202(t) of the Social Security Act for Croatia. Before April 1992, the United States did not recognize Croatia as an independent nation. At that time, it was considered part of the former Yugoslavia which, on March 25, 1959, had been found to have a system that

met section 202(t)(2) of the Social Security Act. Thus, prior April 1992 Croatian citizens were afforded the social insurance exception to the alien nonpayment provision based on the determination which was then in effect for Yugoslavia.

FOR FURTHER INFORMATION CONTACT: Donna Powers, Room 1104, West High Rise Building, P.O. Box 17741, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3568.

(Catalog of Federal Domestic Assistance: Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance)

Dated: February 6, 1996.

James A. Kissko,

Director, Office of International Policy.

[FR Doc. 96–6111 Filed 3–13–96; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice No. 2354]

United States International Telecommunications Advisory Committee (ITAC) Standardization Sector (ITAC–T) Study Group A and Study Groups A, B, C, D; Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC) and the Telecommunications Standardization Sector (ITAC–T) will host several meetings over the next few months to prepare for upcoming international meetings dealing with standardization activities of the International Telecommunication Union. The dates, time, room numbers, and the specific meetings will be as outlined below:

April 8, 9:30 a.m.–12:30 p.m., room 1406, ITAC ad hoc group for ITU Review Committee preparations for the meeting scheduled for April 29–May 4, in Geneva.

April 8, 1:30–4:30 p.m., room 1406, ITAC–T National Group for ITU–T TSAG preparations for the meeting scheduled for July 1–5 in Geneva.

April 9, 9:30 a.m.–4:00 p.m., room 1205, ITAC–T National Group for the ITU–T TSAG preparations.

April 23, 9:30 a.m.–4:00 p.m., room 1205, ITAC–T Study Group A preparations for ITU–T Study Group 2 meeting, May 14–24, in Geneva.

June 10 & 11, 9:30 a.m.–4:00 p.m., rooms 1205 and 1105, ITAC–T National Group for ITU–T TSAG preparations.

July 16 & 17, 9:30 a.m.–4:00 p.m., room 1105, ITAC–T Study Groups A, B, C, and D and the National Group to prepare for the World Telecommunications Standardization Conference (WTSC), Geneva, October 9–18, 1996.

August 7, 9:30 a.m.–4:00 p.m., room 1205, ITAC–T National Group, preparations for the WTSC.

September 4, 9:30 a.m.–4:00 p.m., room 1207, ITAC–T National Group, preparations for the WTSC.

September 19, 9:30 a.m.–4:00 p.m., room 1207, ITAC–T National Group, preparations for the WTSC.

October 2, 9:30 a.m.–4:00 p.m., room 1205, ITAC–T National Group, preparations for the WTSC.

A more extensive agenda will be developed and distributed by fax or electronic mail to members prior to the announced meetings.

Members of the general public may attend the meetings and join in the discussions, subject to the instructions of the chair. Admittance of public members will be limited to the seating available. In this regard, entrance to the Department of State is controlled.

Questions regarding the meeting may be addressed to Mr. Earl Barbely at 202–647–0197. If you wish to attend please send a fax to 202–647–7407 not later than 5 days before the scheduled meetings. Please include your name, Social Security number and date of birth. One of the following valid photo ID's will be required for admittance: U.S. driver's license with picture, U.S. passport, U.S. government ID (company ID's are no longer accepted by Diplomatic Security). Enter from the ''C'' Street Main Lobby.

Dated: March 4, 1996.

[FR Doc. 96–6051 Filed 3–13–96; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Ramsey County, MN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent (NOI).

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Ramsey County, Minnesota. The EIS will include special studies into noise, soil and ground water contamination, water body contamination, water body modification, wetland mitigation and endangered species.

FOR FURTHER INFORMATION CONTACT: William Lohr, Program Development Engineer, Federal Highway Administration, Suite 490 Metro Square Building, 121 East Seventh Place, St. Paul, MN 55101, Telephone (612) 290–3241.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Minnesota Department of Transportation, will prepare a EIS to consider the alternatives and impacts on a proposal for a new three-mile long roadway called Phalen Boulevard in St. Paul, Minnesota. The proposed project will connect Interstate 35E near the Pennsylvania Avenue interchange to Prosperity Avenue near the south end of Lake Phalen. The roadway will serve industrial, commercial, and residential development on Arcade, Payne, Minnehaha, and East 7th Streets. The proposed project is an integral element of an overall Phalen Corridor Initiative directed toward revitalization of St. Paul's East side. Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand.

The alternatives which will be considered include: ''No-Build'', which would only provide maintenance of the existing system; ''Transportation System Management'', which would include activities to optimize the efficiency of the existing system; and all reasonable/feasible ''Build'' alternatives which meet the project objectives. A scoping process will be used to identify the range of ''Build'' alternatives and their impacts and the significant issues which will be addressed in the Environmental Impact Study. The time and place for a scoping meeting, planned for April, 1996, will be announced in the local news media. The location and time of other public meetings will be published.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program.)

Issued on: March 5, 1996.

Alan J. Friesen,

Engineering & Operations Engineer, FHWA Minnesota Division, St. Paul, Minnesota.

[FR Doc. 96–6092 Filed 3–13–96; 8:45 am]

BILLING CODE 4910–22–M

Maritime Administration

[Docket S–934]

American President Lines, LTD.; Notice of Application for a Waiver of Section 804(a) of the Merchant Marine Act, 1936, as Amended, To Permit Certain Foreign-Flag Operations

American President Lines, Ltd. (APL), by application dated March 3, 1996, requests waiver of the provisions of section 804(b) of the Merchant Marine Act, 1936, as amended (Act), for foreign-flag operations of APL under the terms of Operating-Differential Subsidy Agreement (ODSA), Contract MA/MSB–417, in order to permit APL to operate two foreign-flag vessels of approximately 2,700 TEU capacity in APL's Extension Services in the voyage between Kaohsiung and Fujayrah. The waiver is requested for the remaining term of APL's ODSA contract, i.e., through December 31, 1997.

Since APL's two U.S.-flag vessels intended for Extension Service will be drydocked during 1996, APL also seeks permission to operate a third foreign-flag vessel to perform dry-dock relief sailings during the periods the U.S.-flag vessels are out of service.

APL's Existing Services

For a number of years, APL has performed its Southeast and South Asia and Persian Gulf service authority on Trade Route 8—APL's so-called Extension Service authority—using U.S.-flag vessels linked to APL's transpacific line haul services at Kaohsiung. Since late 1988, the Extension Service has been provided using the four U.S.-flag L9 vessels, the PRESIDENTs ARTHUR, BUCHANAN, GARFIELD, and HARDING, that APL has on bareboat charter from Lykes Bros. Steamship Co., Inc. (Lykes), performing weekly sailings on an itinerary Kaohsiung-Singapore-Colombo-Fujayrah.

APL's charters of the L9s will expire during April and May of this year. APL reports that it has been negotiating with Lykes over an extension of the L9 charters, but has been recently informed there will be no extension of the bareboat charters, and it is Lykes' intention to operate the L9s in Lykes' own services.

Accordingly, APL has an urgent need to find four suitable vessels to replace the L9s in order to permit APL to continue to operate the Extension Services. APL states that it has two such vessels in its own fleet, the PRESIDENTs EISENHOWER and F.D. ROOSEVELT. There are U.S.-flag subsidy eligible vessels of approximately 2,700 TEU capacity capable of operating at a speed of 22 knots. However, after a canvassing U.S.-flag tonnage, APL has determined that there are no additional subsidy-eligible U.S.-flag vessels that are suitable for operation alongside the PRESIDENTs EISENHOWER and F.D. ROOSEVELT in this service. APL states, that they must rely on foreign-flag tonnage to supplement the PRESIDENTs EISENHOWER and F.D. ROOSEVELT in performing the Extension Service, and hereby seek a section 804(b) waiver to do so, using two foreign-flag vessels that are compatible with the PRESIDENTs EISENHOWER and F.D. ROOSEVELT.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7210, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590. Comments must be received no later than 5:00 p.m. on March 22, 1996. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies))

By Order of the Maritime Administrator.

Dated: March 11, 1996.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 96–6132 Filed 3–13–96; 8:45 am]

BILLING CODE 4910–81–P

Research and Special Programs Administration

[Docket No. PS–102, Notice No.4]

Control of Drug Use and Alcohol Misuse in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations Alcohol Misuse Prevention Program

ACTION: Correction of notice number.

SUMMARY: This document inserts a docket number and notice number of document 96–3304 published in the Federal Register on Wednesday, February 14, 1996 (61 FR 5834). In the document heading on page 5834, the docket number is to read ''PS–102'' and the notice number is to read as ''Notice No. 4.'' The notice states the Management Information System (MIS) Statistical Data for the random drug testing regulations.

FOR FURTHER INFORMATION CONTACT: Ms. Catrina Pavlik, Drug/Alcohol Program Analyst, Office of Pipeline Safety, Research and Special Programs Administration, Department of Transportation, Room 2335, 400 Seventh Street, SW., Washington, DC 20590–0001; (202) 366–6199.

Issued in Washington, DC, on March 1, 1996.

Richard B. Felder,

Associate Administrator, Office of Pipeline Safety.

[FR Doc. 96–6066 Filed 3–13–96; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Form 8609]

Proposed Collection; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8609 Low-Income Housing Credit Allocation Certification and Schedule A (Form 8609), Annual Statement.

DATES: Written comments should be received on or before May 13, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Low-Income Housing Credit Allocation Certification and Schedule A (Form 8609), Annual Statement.

OMB Number: 1545–0988.

Form Number: Form 8609 and Schedule A (Form 8609).

Abstract: Owners of residential low-income rental buildings may claim a low-income housing credit for each qualified building over a 10-year credit period. Form 8609 is used to get a credit allocation from the housing credit agency. The form, along with Schedule A, is used by the owner to certify necessary information required by the law.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of OMB approval.

Affected Public: Businesses, Individuals or households, and State, Local or Tribal Government.

Estimated Number of Respondents: 120,000.

Estimated Time per Respondent: 22 hrs., 26 min.

Estimated Total Annual Burden Hours: 2,692,200.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 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.

Approved: March 5, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–6153 Filed 3–13–96; 8:45 am]

BILLING CODE 4830–01–U

[IA–195–78]

Proposed Collection; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–195–78, Certain Returned Magazines, Paperbacks, or Records. (Regulation § 1.458–1).

DATES: Written comments should be received on or before May 13, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Certain Returned Magazines, Paperbacks, or Records.

OMB Number: 1545–0879.

Regulation Project Number: IA–195–78 Final.

Abstract: The regulations provide rules relating to an exclusion from gross income for certain returned merchandise. The regulations provide that in addition to physical return of the merchandise, a written statement listing certain information may constitute evidence of the return. Taxpayers who receive physical evidence of the return may, in lieu of retaining physical evidence, retain documentary evidence of the return. Taxpayers in the trade or business of selling magazines, paperbacks, or records, who elect to use a certain method of accounting, are affected.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Businesses or other for-profit institutions.

Estimated Number of Respondents: 19,500.

Estimated Time Per Respondent: 25 minutes.

Estimated Total Annual Burden Hours: 8,125 hours.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the 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 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.

Approved: March 5, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–6155 Filed 3–13–96; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects in the exhibit, ''Jan Steen: Painter and Storyteller'' (see list [1]) imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These

[1] A copy of this list may be obtained by contacting Ms. Neila Sheahan of the Office of the General Counsel of USIA. The telephone number is 202/619–5030, and the address is Room 700, U.S. Information Agency, 301 4th St. SW., Washington, DC 20547.

objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition of the objects at National Gallery of Art, Washington, DC, from on or about April 28, 1996, to on or about August 18, 1996, is in the national interest.

Public notice of this determination is ordered to be published in the Federal Register.

Dated: March 8, 1996.

Les Jin,

General Counsel.

[FR Doc. 96–6142 Filed 3–13–96; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Veterans Health Administration (VHA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before May 13, 1996.

ADDRESSES: Direct all written comments to Ann Bickoff, Veterans Health Administration (161A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VHA request for Office of Management and Budget (OMB) approval. In this document VHA is soliciting comments concerning the following information collection:

OMB Control Number: None Assigned.

Title and Form Number: Army Chemical Corps Vietnam Veterans Health Study, VA Form 10–20998(NR).

Type of Review: New collection.

Need and Uses: VA researchers will use the proposed study data to determine whether there are indications that veterans of the Army Chemical Corps and their families suffer from illnesses at higher or unusual rates then non-Vietnam era Army Chemical Corps veterans and their families. The relationship between health outcomes and possible exposure to herbicides will also be evaluated. If the information for the study is not collected, VA will not be able to do the study and will have failed to comply with the intent of Congress when Public Law 102–4, the ''Agent Orange Act of 1991'', was enacted. In addition, the results of the study will be valuable to VA in formulating compensation and medical benefits policies for veterans of the Vietnam War.

Affected Public: Individuals and households.

Estimated Annual Burden: 325 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 650.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, Telephone (202) 565–8266 or FAX (202) 565–8267.

Dated: March 6, 1996.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 96–6133 Filed 3–13–96; 8:45 am]

BILLING CODE 8320–01–P

Fund Availability Under the VA Homeless Providers Grant and Per Diem Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs is announcing the availability of funds for applications for assistance under VA's Homeless Providers Grant and Per Diem Program. This Notice contains information concerning the program, application process and amount of funding available.

DATES: An original completed grant application (plus three copies) for assistance under the VA Homeless Providers Grant and Per Diem Program must be *received* in Mental Health and Behavioral Sciences Services, Washington, DC, by 5:00 PM Eastern Time on April 29, 1996. Applications may not be sent by facsimile (FAX). In the interest of fairness to all competing applicants, this deadline is firm as to date and hour, and VA will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their material to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

FOR A COPY OF THE APPLICATION PACKAGE CONTACT: Veterans Industries, 10770 N. 46th Street (A 400), Tampa, FL, 33617–3465; (813) 228–2871 (this is not a toll-free call). For a document relating to the VA Homeless Providers Grant and Per Diem Program, see the final rule codified at 38 CFR Part 17.700. Funds made available through this Notice are subject to those regulations.

SUBMISSION OF APPLICATION: An original completed grant application (plus three copies) must be submitted to the following address: Mental Health and Behavioral Sciences Service (111C), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Applications must be received in Mental Health and Behavioral Sciences Service by the application deadline.

FOR FURTHER INFORMATION CONTACT: Theresa Hayes, VA Homeless Providers Grant and Per Diem Program, Mental Health and Behavioral Sciences Service (111C), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420; (202) 565–7313 or (202) 565–7235 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: This Notice announces the availability of funds for assistance under VA's Homeless Providers Grant and Per Diem Program. This program is authorized by Public Law 102–590, the Homeless Veterans Comprehensive Service Programs Act of 1992. Funding applied for under this Notice may be used for: (1) Expansion, remodeling or alteration of existing buildings; (2) acquisition of buildings, acquisition and rehabilitation of buildings; (3) new construction; and (4) procurement of vans. Applicants must have established supportive housing or supportive services programs after November 10, 1992. Applicants may apply for more than one type of assistance.

Applicants interested in applying for per diem payments, or in-kind assistance through VA in lieu of per diem payments, need only submit Request for Recognition of Eligibility. Requirements for receiving per diem

payments are specified at 38 CFR §§ 17.715–17.723.

Grant applicants may not receive assistance to replace funds provided by any state or local government to assist homeless persons. For existing projects, VA will fund only the portion of the project that will establish new programs, or new components of existing program. A proposal for an existing project that seeks to shift its focus by changing the population to be served or the precise mix of services to be offered is not eligible for consideration. No more than 25 percent of services available in projects funded through this grant program may be provided to clients who are not receiving those services as veterans.

Authority. VA's Homeless Providers Grant and Per Diem Program is authorized by Sections 3 and 4 of Public Law 102–590, the Homeless Veterans Comprehensive Service Programs Act of 1992 (38 USC 7721 note) and has been extended through fiscal year 1997 by Public Law 104–110. The program is implemented by the final rule codified at 38 CFR Part 17.700 as amended by the final rule published in the Federal Register on February 27,1995. The funds made available under this Notice are subject to the requirements of those regulations.

Allocation. Approximately $6.0 million is available for the grant and per diem components of this program.

Application Requirements. The specific grant application requirements will be specified in the application package. The package includes all required forms and certifications. Conditional selections will be made based on criteria described in the application. Applicants who are conditionally selected will be notified of the additional information needed to confirm or clarify information provided in the application. Applicants will then have one month to submit such information. If an applicant is unable to meet any conditions for grant award within the specified time frame, VA reserves the right to not award funds and to use the funds available for other components of the Grant and Per Diem Program.

Dated: March 8, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 96–6139 Filed 3–13–96; 8:45 am]

BILLING CODE 8320–01–P

Medical Research Merit Review Committee, Notice of Meetings

The Department of Veterans Affairs gives notice under the Federal Advisory Committee Act, 5 U.S.C. App., of the following meetings to be held from 8 a.m. to 5 p.m. as indicated below:

Subcommittee for	Date	Location
Endocrinology	March 18–19, 1996	Holiday Inn Central.
Neurobiology	March 18–20, 1996	Holiday Inn Central.
Aging and Clinical Geriatrics	March 22, 1996	Renaissance Hotel.
Surgery	March 23–24, 1996	Renaissance Hotel.
Hematology	March 28–29, 1996	Renaissance Hotel.
Alcoholism and Drug Dependence	March 29, 1996	Renaissance Hotel.
Immunology	April 1–2, 1996	Renaissance Hotel.
Oncology	April 1–2, 1996	Renaissance Hotel.
Nephrology	April 2–3, 1996	Renaissance Hotel.
Cardiovascular Studies	April 9–10, 1996	Holiday Inn Central.
General Medical Science	April 12–13, 1996	Holiday Inn Central.
Gastroenterology	April 18–19, 1996	Renaissance Hotel.
Respiration	April 19–20, 1996	Renaissance Hotel.
Infectious Diseases	April 22–23, 1996	Holiday Inn Central.
Mental Health and Behavioral Sciences	April 25–26, 1996	Holiday Inn Central.
Medical Research Service Merit Committee	June 5, 1996	Holiday Inn Central.

Holiday Inn Central, 1501 Rhode Island Avenue, NW., Washington, DC 20005, Renaissance Hotel, 999–9th Street, NW., Washington, DC 20001.

Because of the extended federal government shutdown during the preparation phase of this cycle of Merit Review meetings and consequent delay in obtaining the necessary funds to proceed with obtaining adequate hotel accommodations for meetings during a time of the year when hotel accommodations are very limited, the required 15-day notification of meetings could not be met for the first four subcommittee meetings listed above.

These meetings will be for the purpose of evaluating the scientific merit of research conducted in each specialty by Department of Veterans Affairs (VA) investigators working in VA Medical Centers and Clinics.

These meetings will be open to the public up to the seating capacity of the rooms at the start of each meeting to discuss the general status of the program. All of the Merit Review Subcommittee meetings will be closed to the public after approximately one hour from the start for the review, discussion, and evaluation of initial and renewal projects.

The closed portion of the meeting involves discussion, examination, reference to, and oral review of site visits, staff and consultant critiques of research protocols and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing portions of these meetings is in accordance with 5 U.S.C., 552b(c)(6) and (9)(B). Because of the limited seating capacity of the rooms, those who plan to attend should contact Dr. Leroy Frey, Chief, Program Review Division, Medical Research Service, Department of Veterans Affairs, Washington, DC, (202) 565–5942, at least five days prior to each meeting. Minutes of the meetings and rosters of the members of the Subcommittees may be obtained from this source.

Dated: March 7, 1996.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 96–6134 Filed 3–13–96; 8:45 am]

BILLING CODE 8320–01–M

federal register

Thursday
March 14, 1996

Part II

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 490

Alternative Fuel Transportation Program; Final Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 490

[Docket No. EE–RM–95–110]

RIN 1904–AA64

Alternative Fuel Transportation Program

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Final rule.

SUMMARY: The Department of Energy is today publishing a final rule required by the Energy Policy Act of 1992 to implement statutorily-imposed alternative fueled vehicle acquisition requirements that apply to certain alternative fuel providers and some State government vehicle fleets. The rule principally covers: interpretations necessary for affected entities to determine whether and to what extent the statutory requirements apply; procedures for exemptions and administrative remedies; and a program of marketable credits to reward those who voluntarily acquire vehicles in excess of mandated requirements or before the requirements take effect, and to allow use of such credits in order to demonstrate compliance with those requirements.

EFFECTIVE DATE: This rule is effective April 15, 1996.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Katz, Program Manager, Office of Energy Efficiency and Renewable Energy (EE–33), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6116.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Provision of Lead Time to States and Covered Fuel Providers
III. Section-by-Section Discussion of Comments and Rule Provisions
A. Subpart A—General Subpart
B. Subpart B—[Reserved]
C. Subpart C—Mandatory State Fleet Program
D. Subpart D—Alternative Fuel Provider Acquisition Mandate
E. Subpart E—[Reserved]
F. Subpart F—Alternative Fueled Vehicle Credit Program
G. Subpart G—Investigations and Enforcement
IV. Review Under Executive Order 12612
V. Review Under Executive Order 12778
VI. Review Under Executive Order 12866
VII. Review Under the Regulatory Flexibility Act
VIII. Review Under the Paperwork Reduction Act
IX. Review Under the National Environmental Policy Act
X. Impact on State Governments

I. Introduction

This notice of final rulemaking concludes a regulatory action that is mandated under the Energy Policy Act of 1992 (the Act), Pub. L. 102–486. That Act provides for a comprehensive national energy policy for strengthening U.S. energy security by reducing dependence on imported oil. Titles III, IV, V, and VI of the Act contain regulatory requirements and authorities, as well as various financial incentives aimed at displacing substantial quantities of oil consumed by motor vehicles. This rulemaking implements alternative fueled vehicle (AFV) acquisition requirements imposed by Congress in sections 501 and 507(o) of the Act on certain alternative fuel providers and some State government fleets. 42 U.S.C. 13251, 13257(o).

On February 28, 1995, the Department of Energy (DOE) published a notice of proposed rulemaking under sections 501 and 507(o) of the Act. 60 FR 10970. Public hearings were held in three cities with the 60-day public comment period closing on May 1, 1995. DOE received approximately 200 comments on the notice of proposed rulemaking.

DOE's notice of proposed rulemaking incorporated the statutory acquisition schedules for alternative fuel providers and State fleets. It further stated that, as provided in the Act, those schedules would take effect at the beginning of model year 1996. 60 F.R. 10971. Many commenters argued that DOE could not require compliance with the Act's acquisition schedules in model year (''MY'') 1996 because it had failed to promulgate final regulations by certain deadlines set forth in the Act. They stated that imposing the requirements in MY 1996 would deprive them of lead time that Congress intended them to have to prepare to comply with the AFV acquisition requirements. After considering these comments, DOE published a notice in the Federal Register on June 12, 1995, reopening the rulemaking record for receipt of comment on various options DOE was considering to give States and covered fuel providers lead time to prepare to comply with the vehicle acquisition requirements. 60 FR 30795. DOE received approximately 80 comments on this issue.

On July 31, 1995, DOE published a second notice of limited reopening of the comment period. The principal purpose of this notice was to invite public comment on options for defining the term ''substantial portion,'' which is used in section 501(a) of the Act to determine coverage for certain petroleum producers and importers, and on options for modifying the proposed definition of ''alternative fuel'' with respect to alcohol fuels and biodiesel. Notice of limited reopening, 60 FR 38974, *corrected* 60 FR 40539 (August 9, 1995). In response to this reopening of the comment period, DOE received approximately 20 additional comments.

In response to comments from members of the public and State officials, and consistent with the Act, DOE has modified the proposed rule in a variety of ways. The principal modifications, which are explained in detail later in this Supplementary Information, are: (1) A one-year shift in the statutory alternative fueled vehicle acquisition schedules; (2) an automatic exemption to allow time for a State to apply for and obtain approval of an Alternative State Plan for State fleets; (3) a revised definition of the statutory term ''substantial portion'' that omits small refiners from acquisition requirements and includes large, integrated producers and importers; (4) the addition of neat biodiesel to the list of ''alternative fuels''; and (5) a provision for the allocation of credits to State government fleets and covered fuel providers for newly acquired medium and heavy duty alternative fueled vehicles.

A. Background

A primary goal of the Energy Policy Act of 1992 is to enact a comprehensive national energy policy that strengthens U.S. energy security by reducing dependence on imported oil. Currently, the United States consumes seven million barrels of oil more per day than it produces. Section 502 of the Act (42 U.S.C. 13252) provides goals of a 10 percent displacement in U.S. motor fuel consumption by the year 2000 and a 30 percent displacement in U.S. motor fuel consumption by the year 2010 through the production and increased use of replacement fuels. Section 504 of the Act (42 U.S.C. 13254) allows the Secretary to revise these goals downward. According to the latest projections by the Energy Information Administration, the transportation sector will consume 13.1 million barrels per day of petroleum in 2010. Of this total, about 7.4 million barrels per day of petroleum are projected to be used by light duty vehicles. The Energy Information Administration also estimates that 65 percent of our total

petroleum demand will be imported in 2010.

The greatest gains in displacing petroleum motor fuel consumption by the year 2010 are expected to occur by replacing gasoline with alternative fuels such as electricity, ethanol, hydrogen, methanol, natural gas and propane, in a portion of the U.S. car and truck population, which is projected to be in excess of 200 million vehicles in the year 2010. Currently, alternative fueled vehicles comprise a small fraction of the total U.S. vehicle stock. According to the Energy Information Administration, of the 180 million light duty vehicles registered in 1992, 250,000 were alternative fueled vehicles. Of this total, about 221,000 were fueled by liquified petroleum gas (propane), about 24,000 were fueled by compressed natural gas, and about 3,400 were fueled by methanol or ethanol. The remaining quantity of vehicles was comprised of electric vehicles and vehicles fueled by liquified natural gas. In 1994, it was expected that 300,000 alternative fueled vehicles will be registered in the U.S. and that the proportion of vehicles operating on each fuel will be approximately the same. (Alternatives to Traditional Transportation Fuels: An Overview, DOE/EIA–0585/O, 1994)

To enable the Act's displacement goals to be met, alternative fuels must be readily accessible and motor vehicles that operate on these alternative fuels must be available for purchase. Thus, two important elements of reducing petroleum motor fuel consumption are: a nationwide alternative fuels infrastructure and the availability of alternative fueled vehicles for purchase at a reasonable cost by the general public in a wide variety of vehicle types and fueling options.

B. Description of the Energy Policy Act Alternative Fuel Transportation Program's Basic Provisions

1. General Structure

Titles III, IV, V, and VI of the Act contain the basic provisions for regulatory mandates and authorities, as well as various financial incentives, all of which are aimed at displacing substantial quantities of oil consumed by motor vehicles. Title III contains general definitions which set forth legislatively mandated policy essential to understanding: (1) What constitutes an alternative fueled vehicle; (2) who must comply with regulatory mandates to acquire such vehicles; and (3) the extent to which a regulated entity's inventory of vehicles is subject to mandates to acquire alternative fueled vehicles. Title III also sets forth mandatory requirements for Federal fleet acquisitions of alternative fueled vehicles, which began in fiscal year 1993.

Title IV includes a financial incentive program for States, a public information program, and a program for certifying alternative fuel technician training programs.

Title V provides for separate regulatory mandates for the purchase of alternative fueled vehicles which apply to: (1) Alternative fuel providers; (2) State government fleets; and (3) private and municipal fleets. These mandates set forth annual percentages of new light duty motor vehicle acquisitions which must be alternative fueled vehicles. The minimum acquisition requirements are phased-in, escalating from year to year until reaching a fixed percentage. The acquisition schedules for alternative fuel providers and State governments were to take effect at the beginning of model year 1996. The acquisition schedule for private and municipal fleets in section 507(a) is a tentative schedule which may only take effect if confirmed in a DOE rulemaking. Such a rulemaking could conclude that imposition of a vehicle acquisition mandate on private and municipal fleets is not appropriate. Title V also allows for credits for alternative fueled motor vehicles acquired beyond what is legally required. These credits may be sold and used by other persons or fleets subject to a vehicle acquisition mandate. Finally, title V contains investigative and enforcement authorities including provisions for civil penalties and, in certain circumstances, criminal fines for noncompliance with the statutory mandates and implementing regulations.

Title VI of the Act contains a variety of authorities to promote development and utilization of electric motor vehicles. More specifically, subtitle A provides for a commercial demonstration program, and subtitle B provides for an infrastructure and support systems development program.

This notice of final rulemaking principally implements the title V vehicle acquisition mandates applicable to alternative fuel providers and to State governments.

2. Comparison to Environmental Protection Agency (EPA) Fleet Requirement Program

The Clean Air Act, 42 U.S.C. 7401 et. seq., established a fleet vehicle acquisition program that is somewhat similar to those in the Energy Policy Act of 1992. Section 246 of the Clean Air Act requires each State in which there is located all or part of an ozone non-attainment area classified as extreme, severe, or serious under the Clean Air Act, or a carbon monoxide non-attainment area with a design value at or above 16.0 parts per million, to submit a State implementation plan revision establishing a clean fuel vehicle program providing that, beginning in model year 1998, certain percentages of covered fleet vehicles must be clean fuel vehicles operating on clean alternative fuels. 42 U.S.C. § 7586. Section 241 of the Clean Air Act contains definitions for the terms ''clean alternative fuel,'' ''covered fleet,'' and ''covered fleet vehicle'' that contain some phrases later used in the definitions in section 301 of the Energy Policy Act of 1992.

While there are these similarities in statutory text that should not be ignored by DOE in formulating its regulations, there are critical differences between the two pieces of legislation: (1) The primary goal of the EPA program is to significantly improve air quality through reduced emissions of pollutants, and the primary goal of the DOE program is to strengthen national energy security by reducing dependence on imported oil; (2) the lists of fuels enumerated in the definitions of ''clean alternative fuel'' under section 241 of the Clean Air Act and of ''alternative fuel'' under section 301 of the Energy Policy Act of 1992 are not identical, and the Department's rulemaking discretion to add to the section 301 list is limited by stringent statutory standards; (3) the EPA program applies to fleets as small as 10 vehicles while 20 is the minimum number of vehicles for a fleet as defined by section 301; (4) the EPA program applies to light duty motor vehicles (up to 8,500 gross vehicle weight rating) and heavy duty motor vehicles (up to 26,000 gross vehicle weight rating) while the DOE program applies only to light duty motor vehicles; (5) the States will administer the EPA program while DOE will directly administer the Energy Policy Act program; and (6) the EPA program applies only to fleets in certain ozone or carbon monoxide non-attainment areas while the DOE program applies nationwide.

DOE has attempted in this rule to minimize the compliance burden on fleet owners and operators who are subject to both the EPA and the DOE fleet acquisition requirements. In particular, DOE has adopted many of the definitions and interpretations of similar terms that EPA published on December 9, 1993 (58 FR 64679). However, the different statutory provisions and goals of the Energy Policy Act have prevented DOE from adopting EPA's provisions in every instance. The most notable instance of

divergence from EPA's regulations is the definition of the terms ''centrally fueled'' and ''capable of being centrally fueled'' in Subpart A. Those definitions are explained in the section-by-section discussion in this Supplementary Information.

With regard to burden of compliance, it is important to note that the overlap between this final rule and EPA regulations is limited. The EPA program applies only in certain nonattainment areas. In a final program rule published on September 30, 1994, EPA identified 22 nonattainment areas covered by the Clean Fuel Fleet Program. 59 FR 50043. EPA officials have reported to DOE that California and Texas, which contain 9 of the 22 areas, have submitted applications to ''opt out'' of the Clean Fuel Fleet Program. In addition, EPA expects the eastern States that are members of the Ozone Transport Commission to opt out of the program in order to participate in a 49-State Low Emission Vehicle Program that is being developed.

Thus, while irreconcilable differences in the Clean Air Act and the Energy Policy Act prevent total congruence in implementing regulations, the few different provisions in this final rule are not expected to significantly impact many affected fleets.

II. Provision of Lead Time to States and Covered Fuel Providers

The Act required DOE to issue regulations implementing the alternative fuel provider acquisition requirements in section 501(a) by January 1, 1994, 20 months before the start of MY 1996 (beginning on September 1, 1995). In addition, the Act required DOE to promulgate a rule to implement the requirements for State government fleets in section 507(o) by April 24, 1994, 16 months before the acquisition requirements became effective in MY 1996. DOE was unable to meet the statutory deadlines for promulgation of rules to implement sections 501 and 507(o) of the Act. The Act, which was enacted on October 24, 1992, contained a multitude of new responsibilities, including the alternative fueled vehicle acquisition mandates in title V. DOE was forced to prioritize its implementation of these responsibilities, and it periodically reported to Congress on the status of its implementation progress. See, for example, U.S. Department of Energy, *Energy Policy Act of 1992: Implementation Status Report* (Oct. 24, 1994). Although implementation of the alternative fueled vehicle acquisition requirements was given a high priority for action, the Administration's request for additional funds in fiscal year 1993 for this purpose was not approved.

Many public comments on the notice of proposed rulemaking stated that lead time was needed between promulgation of final rules by DOE and compliance with the vehicle acquisition requirements. On June 12, 1995, DOE reopened the rulemaking record for receipt of comment on various options it was considering for providing lead time to covered fuel providers and States, which would allow sufficient time for them to prepare to comply with the vehicle acquisition requirements. These options included amending the statutory vehicle acquisition schedule, staying enforcement, or some combination of amending the schedule and staying enforcement. The notice specifically requested comment on the statutory authority of DOE to amend or stay enforcement of the acquisition schedules. See 60 F.R. 30796.

A. Summary of the Lead Time Provisions in the Final Rule

The final rule provisions related to providing lead time to States and covered persons are summarized as follows:

Model Year 1996. To provide lead time for States and covered fuel providers to prepare to comply with the vehicle acquisition requirements, the acquisition schedules in § 409.201 (for State government fleets) and § 490.302 (for alternative fuel providers) have been revised to begin in MY 1997. The AFV acquisition requirements for MY 1997, which starts on September 1, 1996, must be met by August 31, 1997 (the end of the model year).

Model Year 1997. Except for States that choose to comply with an alternative plan under § 490.203, DOE may provide lead time to States and covered fuel providers in MY 1997, on a case-by-case basis, using the exemption procedures set forth in § 490.204 (for States) and § 490.308 (for fuel providers). Exemptions will be granted to any State or covered person able to demonstrate that it cannot comply with the MY 1997 vehicle acquisition requirements because of DOE's failure to promulgate regulations by the statutory deadlines. An automatic exemption is provided in § 490.203(h) to allow time for a State government fleet to apply for and obtain approval of a Light Duty Alternative Fueled Vehicle Plan.

Acquisition Level in MY 1997. DOE has reduced the required acquisition percentages in the alternative fueled vehicle acquisition schedules in § 490.201 and § 490.302 by one model year. Thus, States and covered persons are required to acquire vehicles in MY 1997 at the statutory percentage for MY 1996; in MY 1998 at the MY 1997 statutory percentage; and so on.

Credits for MY 1996 Acquisitions. DOE has revised § 490.503(b) and (c) to provide that credits will be allocated for alternative fueled vehicles acquired on or after October 24, 1992, and before September 1, 1996, the beginning of MY 1997. Those purchases are early-acquired vehicles.

B. Discussion of Lead Time

1. Comments Against Providing Lead Time

Many commenters, principally producers and suppliers of alternative fuel and alternative fueled vehicles and related equipment, argued that because the Act's requirements are relatively straightforward and have been known since October 24, 1992, DOE need not provide lead time to entities subject to the vehicle acquisition requirements, except as a matter of equity in particular instances. Other commenters stated that Congress expressly contemplated the need for delaying or reducing the acquisition requirements when it enacted section 501(b). They argued that because section 501(b) authorizes DOE to delay or modify the requirements only for MY 1997 and later, DOE may not delay or reduce the acquisition requirements for MY 1996. In addition, they stated that because section 507(o) does not contain any provision allowing DOE to delay or modify State purchase obligations, DOE may not delay or reduce the State fleet acquisition requirements.

Some commenters stated that a delay of the vehicle acquisition mandates would jeopardize investments they have made in the production of alternative fueled vehicles or elements of alternative fuels infrastructure.

2. Comments for Providing Lead Time

Many commenters, principally covered fuel providers and fleet operators, argued that they are entitled to at least the amount of lead time provided in sections 501(a) and 507(o) for fuel providers and States, respectively. Some commenters made the additional argument that Congress intended the acquisition requirements to take effect at the beginning of a model year. In their view, DOE is required to delay the statutory vehicle acquisition requirements until MY 1998 to provide regulated entities the amount of time the Act provides between promulgation of rules and compliance. Some commenters stated that section 507(l) of the Act (42 U.S.C. 13257(l)), which

includes lead time requirements among various factors DOE shall take into consideration in carrying out section 507, constitutes express authority for DOE to delay the vehicle acquisition requirements for State fleets and covered fuel providers.

One commenter also argued that DOE can and should grant fuel providers a general exemption from the MY 1996 requirements, under section 501(a)(5) of the Act, because alternative fueled vehicles meeting the normal requirements and practices of covered entities will not be reasonably available by MY 1996. In essence, this commenter argued that because limited types or models of alternative fueled vehicles will be available to satisfy fleet needs, all covered persons should be relieved of the MY 1996 acquisition requirements.

Most of the comments favoring delay of the acquisition mandates contained only general statements about the need for lead time. However, commenters stated that many State government fleets and covered persons cannot acquire alternative fueled vehicles in MY 1996 because their vehicle acquisition processes are too far advanced. Commenters also stated that lead time was needed to discuss costs and options with affected fleet managers, obtain vehicle and fueling facility cost estimates, prepare budgets, identify funding mechanisms, obtain approval of budgets, prepare specifications for vehicles and fueling facilities, issue solicitations for bids, and provide training for persons engaged in the fueling, operation, and repair of the alternative fueled vehicles.

3. DOE Response to Public Comments on Lead Time

DOE does not agree with comments stating that DOE is not required to, and should not, provide any lead time to allow States and covered fuel providers to prepare to comply with the vehicle acquisition mandates. Although regulated entities have had notice of the Act's basic requirements since enactment in 1992, the Act provides for DOE to promulgate rules filling in essential substantive, procedural, and interpretive details before the statutory vehicle acquisition requirements take effect. It is true that there is no express link in the Act between the deadline dates for promulgation of rules and the dates that the vehicle acquisition schedules take effect. Nevertheless, the structure of the Act, including a hiatus between these dates, indicates Congress's intent that regulated entities would have some lead time between promulgation of final regulations and the effective date of the vehicle acquisition requirements to comprehend the programmatic requirements as fully defined by DOE, to apply for applicable exemptions if appropriate, and otherwise plan and execute pre-compliance activities.

DOE recognizes that section 501(b), which allows DOE to reduce or delay the acquisition requirements for fuel providers (but not States) in MY 1997 and thereafter, can be read as an implicit limitation on DOE discretion to modify the statutory acquisition schedule for alternative fuel providers because it is silent with respect to MY 1996. Similarly, DOE recognizes that the silence in section 507(o) with regard to modifying the schedule for State fleets can be interpreted as a lack of authority to provide relief for MY 1996 or to provide limited exemption to accommodate the right of a State to apply for approval of an alternative compliance plan. However, both section 501 and 507(o) are premised upon timely promulgation of regulations, and neither of these provisions address what DOE should do in the event that it proved impossible to promulgate on time. In order to make the necessary adjustments, DOE is choosing to read section 501 and 507(o) without drawing negative implications of lack of authority to deal with problems caused by late promulgation that Congress could have anticipated but omitted to address.[1]

DOE is not persuaded by the comments that it is required by the Act to provide lead time to States and covered fuel providers in the amount of the exact number of months in the Act between the deadline for promulgation of final regulations and the date the statutory acquisition schedules take effect. As pointed out above, the text of the Act does not expressly link these dates. Moreover, the statutory provisions making up the structure of the Act indicate that Congress was not wedded to any fixed period of lead time. For example, the Act provides different amounts of lead time for States (16 months) and covered fuel providers (20 months). It also allows States to submit alternative compliance plans at the end of the 12 month period provided for submitting such a plan. In such a case, a State would only have a few months lead time at most between DOE approval of plans and compliance with the MY 1996 acquisition requirements (beginning September 1, 1995). It is unlikely that the drafters of the Act thought that States, some of which have biennial budgets, would need significantly *less* time than fuel providers to prepare to comply with the MY 1996 vehicle acquisition requirements. Moreover, the small amount of lead time that a State with an alternative compliance plan might have suggests that Congress did not think that 16 months, let alone 20 months, of lead time is a necessity. It also is significant that the statutory provision on alternative compliance plans for States, section 507(o)(2), expressly provides for a 12 month period beginning on the date of the promulgation of final regulations under section 507(o). That language shows that Congress used very precise words when it wanted to create a fixed lead time period. The omission of similar expressed language in section 501 and 507(o)(2) implies that Congress did not intend to establish an absolute amount of lead time prior to State and fuel provider compliance with the vehicle acquisition requirements.

Because MY 1996 has already begun, it is not possible for DOE to both provide adequate lead time *and* require compliance with the statutory MY 1996 acquisition requirements. DOE must, as a matter of administrative necessity, relieve regulated entities from the MY 1996 requirements and determine a lead time period that is appropriate in this situation. For the reasons stated hereafter, DOE has concluded that it will best effectuate the Act's vehicle acquisition mandates with an unconditional one-model year delay, combined with an automatic exemption to allow a State to apply for and obtain approval of an alternative compliance plan, and the case-by-case provision of lead time through the exemption processes in the rule.

With some exemptions, such as States opting to develop alternative compliance plans, States and fuel providers should be able to acquire alternative fueled vehicles through their normal procurement processes. States with annual budgets commonly will approve their fiscal year 1997 budgets in the summer of 1996. Model year 1997 begins on September 1, 1996, and States have until August 31, 1997 to meet their MY 1997 vehicle acquisition requirements. Assuming that State contracts for new vehicles are awarded by the end of 1996, State agencies will have several months to select and place orders for new vehicles in MY 1997. As

[1] At the same time, it is noted that DOE does not interpret section 507(1), 42 U.S.C. 13257(1), as express authority to delay the acquisition requirements for States and covered fuel providers. Section 507(1), which applies only to decisions under that section, has no applicability to the fuel provider mandate in section 501 of the Act. As applied to the State program, section 507(1) directs DOE to consider a variety of factors when it has discretion to consider them. DOE has heeded this provision in preparing this final rule.

explained in the discussion of § 490.204, States that have biennial budget cycles and cannot comply using their normal procurement procedures will be granted exemptions from the requirements.

The record shows that covered fuel providers have a shorter and more flexible procurement process than States.[2] The record is devoid of specific information showing that fuel providers generally cannot comply by the end of MY 1997 through their normal procurement processes. The commenters' desire for more time than most fuel providers are likely to need is more than outweighed by the potential damage to the interests of automakers and others who in reliance on the Act have invested in alternative fueled vehicle production capacity or other aspects of alternative fuel infrastructure, and who commented critically on the policy options for providing lead time.

The rulemaking record also shows that alternative fueled vehicles and alternative fuels will be widely available in MY 1997. Manufacturers of alternative fueled vehicles and conversion kits and alternative fuel equipment manufacturers and suppliers stated in their comments that they have been preparing to meet the increased demand for their products and services flowing from the vehicle acquisition mandates. Although limited types of OEM vehicles will be available in MY 1996, information supplied by automobile manufacturers shows a growing capacity and a desire to meet demand for alternative fueled vehicles in MY 1997. See, *e.g.*, production plans described in the second notice of limited reopening, 60 FR 38974, at 38977. DOE also received comments from companies in the after-market conversion business which stated that they are anticipating demand for their products and services.

Although alternative fuels and alternative fueled vehicles will be widely available in MY 1997, comprehensive information does not exist on the precise quantities that will be available and whether they will match fleets' needs. Undoubtedly, some fleets will not be able to acquire alternative fueled vehicles in MY 1997 that meet their normal requirements and practices. For example, the record shows that currently few Original Equipment Manufacturer (OEM) alternative fueled vehicles are offered in the compact size range. In addition, most OEM alternative fueled vehicles are only available in one alternative fuel configuration. Similarly, although alternative fueling sites exist and are growing in number in many urban markets, alternative fueling infrastructure is lacking in other areas.

However, the fact that some covered persons and fleets will not be able to acquire alternative fueled vehicles or alternative fuels that meet their needs in MY 1997 does not justify a longer unconditional delay of the vehicle acquisition requirements. Congress was aware that, initially, alternative fueled vehicles and alternative fuels would not be available in sufficient amounts and types to satisfy the needs of every covered person and fleet. Anticipating the possibility of uneven availability of vehicles and fuel, Congress provided that exemptions must be granted to both covered fuel providers (section 501(a)(5)) and State fleets (section 507(i)) if alternative fuels or alternative fueled vehicles that meet their normal requirements and practices are not available. States also are eligible for an exemption if compliance would produce an unreasonable financial hardship. DOE will use these exemption processes, included as § 490.204 and § 490.308, to provide additional lead time to covered fuel providers and States that are unable to comply with the acquisition requirements in MY 1997 because of DOE's delay in promulgating a final rule.

DOE expects the criteria for granting exemptions will be flexible enough to respond to exemption requests received in MY 1997 based on inadequate lead time. For example, DOE would likely find unreasonable financial hardship justifying an exemption for any State that cannot meet the MY 1997 requirements by following its regular budget and procurement processes (e.g., a State with a biennial budget). A whole or partial exemption also would likely be granted under § 490.204 if, despite a good faith effort, a State was unable to complete an alternative compliance plan in time to comply in MY 1997. DOE also will apply the criteria and documentation requirements in § 490.308 flexibly in reviewing requests by covered fuel providers who show they need additional lead time to comply.

C. Discussion of Adjustments to Vehicle Acquisition Levels

DOE invited public comment on the question of whether, at the end of the lead time period, States and covered persons should be required to acquire vehicles at the percentage levels set forth in the statutory schedules for MY 1997 and after, or whether DOE should defer each step of the statutory schedules by the lead time period.

1. Comments

Most commenters favoring a delay of the acquisition requirements also favored lowering the acquisition percentages at the end of the lead time period, with the effect of deferring each step of the acquisition schedule by the period of the postponement of the initial requirement. These commenters argued that if DOE required compliance with the applicable statutory model year percentage at the end of the lead time period, it would upset the Act's scheme for the gradual ''ramping up'' of alternative fueled vehicle purchases and the orderly development of the alternative fuel infrastructure.

Many of the commenters opposing delay urged DOE to require compliance with the MY 1997 statutory percentage in MY 1997. These commenters also argued that if DOE delayed compliance for one year, it should require States and covered fuel providers to make up the MY 1996 requirements in subsequent years. In this way, they argued, DOE could satisfy the congressional intent that there be some lead time for covered persons, while at the same time keeping the programs on track with respect to overall vehicle acquisitions.

2. Response to Comments

DOE agrees with the commenters who argued that the Act's gradual ''ramping up'' scheme would be upset if DOE enforced the statutory MY 1997 vehicle acquisition percentages in MY 1997, after having delayed the start of compliance by one year in order to provide lead time to covered fuel providers and States. The statutory percentages for the first year of compliance, MY 1996, are 10 percent for States and 30 percent for covered fuel providers. The MY 1997 alternative fueled vehicle acquisition percentages are 15 percent for States and 50 percent for covered fuel providers.

DOE believes that the difference between the first and second year requirements under the statutory schedules is significant and that it would be inconsistent with the statutory framework to require covered fuel providers and States to comply with the MY 1997 acquisition levels, which Congress established for the second year of the acquisition mandates, in what has become the first year of the program. Further, having decided to require

[2] The Western States Petroleum Association, referring to a National Association of Fleet Administrators study, stated that most fleets make acquisition plans in July and August for October delivery. (Comment No. 35, p. 9). The American Petroleum Institute indicated that typically orders must be placed in August or early September to obtain delivery in October. (Comment No. 147, p. 26).

compliance in MY 1997 at the MY 1996 statutory percentages, DOE concludes that it is necessary to reduce future year percentages by one model year in order to preserve the statutory scheme of gradually increasing the acquisition requirements over a period of years.

Some comments pointed out that although section 501(b) permits DOE to reduce the acquisition percentage requirements for covered fuel providers for MY 1997 and thereafter, there is no comparable provision in section 507(o) that permits DOE to lower the percentages for State government fleets. There is no legislative history that explains the different treatment of fuel providers and States, but some commenters speculated that Congress did not include a provision permitting DOE to lower the percentages for State fleets because the percentages in section 507(o) are much lower than for fuel providers in the early years of the program. In any event, DOE does not interpret the Act's provisions to prevent it from making adjustments that are consistent with Congress' evident intent to provide lead time to covered fuel providers and States before requiring compliance with the mandates.

D. Discussion of Giving Credits for Alternative Fueled Vehicle Acquisitions in MY 1996.

Several commenters stated that covered persons and fleets that have made plans to comply with the acquisition requirements in MY 1996 would be penalized if DOE delayed the compliance schedule and did not award them credits for alternative fueled vehicle acquisitions in MY 1996. DOE agrees. The final rule provides that the acquisition of alternative fueled vehicles by covered persons and State fleets will be treated as early-acquired vehicles, which are eligible for one credit for each year they are acquired before they are required to be acquired. Awarding credits for MY 1996 vehicle acquisitions will avoid any disadvantage that otherwise would be experienced by State government fleets and covered persons. It also creates an incentive for covered persons and fleets to acquire alternative fueled vehicles in MY 1996, which will further the petroleum displacement and air quality goals of the Act.

III. Section-By-Section Discussion of Comments and Rule Provisions

This section of the Supplementary Information responds to significant comments on specific rule provisions. It also contains explanatory material for some rule provisions that were not the subject of public comment in order to provide interpretive guidance (mostly drawn from the preamble to the notice of proposed rulemaking) to States and persons that must comply with this part. Most changes from the notice of proposed rulemaking are explained in this section. However, some nonsubstantive changes, such as the renumbering of paragraphs and changes to clarify the meaning of rule provisions, are not discussed.

A. Subpart A—General Subpart

Definition of ''Fleet,'' ''Centrally Fueled,'' and ''Capable of Being Centrally Fueled''

To promote easier understanding, DOE has divided the statutory definition of ''fleet'' into two parts. The main paragraph in the statutory definition appears in § 490.2 under the word ''fleet.'' This regulatory definition of ''fleet'' cross references § 490.3, which describes the categories of vehicles excluded by statute from the definition.

Section 301(9) of the Act limits the term ''fleet'' to vehicles used primarily in a metropolitan statistical area (MSA) or consolidated metropolitan statistical area (CMSA) with a 1980 population of more than 250,000. Consistent with the Act, the definition of ''fleet'' in § 490.2 cross references Appendix A to subpart A, which sets forth a list of MSAs and CMSAs with 1980 Bureau of the Census population of 250,000 or more. Appendix A was generated from information in ''The Statistical Abstract of the United States, 1993,'' which lists all of the MSAs and CMSAs, as defined by the Office of Management and Budget (OMB) as of December 31, 1992, with a Bureau of Census population of 250,000 or more as of 1991. This document also gives the 1980 Census populations for these areas. The MSAs and CMSAs included in Appendix A are those statistical areas, as defined by OMB at the end of 1992, that have 1980 Census populations of 250,000 or more.

One commenter objected to the inclusion of a city in Appendix A because its 1980 population was less than 250,000. The city and surrounding area were subsequently classified as an MSA, prior to October 24, 1992, based on census data. DOE has not removed the MSA from the list because, as shown in the Bureau of the Census' 1993 statistical abstract, the area now classified as an MSA had a 1980 population greater than 250,000.

The statutory definition of ''fleet'' does not specify whether the list must be updated in light of changes in the geographic areas designated by the Bureau of the Census as MSAs and CMSAs which meet the 1980 population requirement of the Act. Comments were received as to whether DOE should update the Appendix A list to add new MSAs/CMSAs that had a 1980 population of 250,000. The majority of these comments were against adding areas to the list because of the uncertainty that updating might cause. DOE does not interpret section 301(9) of the Act to require it to update the list of MSA/CMSAs, and in light of these comments, has decided not to update the Appendix A list in the future.

A few comments urged DOE to remove areas from the list in Appendix A if their populations have fallen below 250,000 since 1980. DOE has not adopted this recommendation because the language of section 301(9) of the Act, 42 U.S.C. 13211(9), is unambiguous in including all areas having a 1980 population of 250,000, as determined by the Bureau of the Census, in the definition of ''fleet.''

Consistent with the statutory language, the definition of ''fleet'' requires that there be a minimum of 20 light duty motor vehicles ''used primarily'' in a relevant statistical area. As discussed below under ''Other Definitions,'' DOE interprets ''used primarily'' to mean that the majority (i.e., over 50 percent) of each vehicle's total annual miles are accumulated within a covered statistical area.

The statutory and regulatory definitions of ''fleet'' also provide that the vehicles be ''centrally fueled or capable of being centrally fueled.'' As discussed more fully below, § 490.2 defines the term ''centrally fueled'' to mean that a vehicle is fueled at least 75 percent of the time at a location that is owned, operated, or controlled by a fleet or covered person, or is under contract with the fleet or covered person for refueling purposes. Vehicles that do not meet the 75% centrally fueled criterion are excluded from the vehicles counted to determine whether a ''fleet'' exists, and they are excluded from the base used to calculate a covered fuel provider's or State fleet's alternative fueled vehicle acquisition requirements. The Act does not make the centrally fueled criterion applicable to the actual operation of fleet vehicles. As explained elsewhere in this Supplementary Information, section 501(a)(4) of the Act requires alternative fueled vehicles acquired by covered fuel providers to be operated solely on alternative fuels, except when operating in areas where alternative fuel is not available. The Act does not establish operational requirements for State government fleets subject to the acquisition requirements.

It should be noted that the statutory requirement covers those vehicles that

are centrally fueled or are *capable of being centrally fueled*. It is possible that a vehicle that is not currently centrally fueled could be centrally fueled. Therefore, an organization which has determined that its vehicles are not centrally fueled must still determine if the vehicles are capable of being centrally fueled. If the vehicles are so capable, then the total vehicles either centrally fueled or capable of being centrally fueled may result in a ''fleet'' or ''covered person'' that is subject to the acquisition requirements of the Act.

In determining whether 20 or more light duty motor vehicles within a MSA or CMSA are centrally fueled or capable of being centrally fueled, the organization must also consider situations where vehicles that are centrally fueled or capable of being centrally fueled are present in more than one location within the MSA or CMSA. The number of vehicles at all locations that are centrally fueled or capable of being centrally fueled must be totaled. For example, if a fleet or covered person has 12 vehicles at location A that are centrally fueled or capable of being centrally fueled and 10 vehicles at location B that are also centrally fueled or capable of being centrally fueled, the organization has 22 vehicles in a MSA or CMSA that are centrally fueled or capable of being centrally fueled.

Relying upon EPA's determination that ''contract fueling'' is one method of establishing whether fleet vehicles are centrally fueled, DOE noted in the notice of proposed rulemaking that retail credit card purchases by themselves are not considered to be a contractual refueling agreement. However, the notice concluded, as did EPA, that commercial fleet credit cards are considered to be a contractual refueling agreement, since they are intended as a special fuel arrangement for fleet purchases alone. The intent of DOE's proposed definition was to ensure that only those fleet-based agreements which provide special fleet refueling benefits at a particular facility or group of facilities would qualify as central fueling.

Several commenters brought to DOE's attention that EPA had modified its determination regarding the role that fleet payment methods play in establishing whether fleet vehicles are centrally fueled or capable of being centrally fueled. In a September 30, 1994, Federal Register notice (59 FR 50068), EPA states that it ''will no longer recommend that States look to the payment method as a key indicator of the presence or absence of central fueling.'' In its place EPA recommends that ''States look at the actual refueling patterns used by fleet operators.'' DOE has deleted the reference to credit card agreements from its definitions of ''centrally fueled'' and ''capable of being centrally fueled'' to be consistent with EPA.

Section 490.2 defines the terms ''centrally fueled'' and ''capable of being centrally fueled'' to mean a vehicle is or can be refueled at least 75 percent of its time at a location, that is owned, operated, or controlled by the fleet or covered person, or is under contract with the fleet or covered person for refueling purposes. The method that DOE is requiring for determining central fueling capability is whether 75 percent of a vehicle's total annual miles traveled are derived from trips that are less than the operational range of the vehicle. As defined by EPA, in its December 9, 1993, Federal Register notice (58 FR 64684) on the final rule for the definitions and general provisions for the Clean Fuel Fleet Program, the operational range is the distance a vehicle is able to travel on a round trip with a single refueling.

The DOE definitions differ from the EPA definitions of ''centrally fueled'' and ''capable of being centrally fueled,'' at 40 CFR 88.302–94, because the DOE definitions do not require that vehicles covered must be capable of being centrally fueled 100 percent of the time. DOE received comments, principally from representatives of natural gas and propane producers and marketers that supported the 75 percent central fueling standard in DOE's proposed definitions of ''centrally fueled'' and ''capable of being centrally fueled.'' Some of these commenters stated that a 100 percent standard would allow fleets to easily avoid the requirements by redefining vehicle missions and operating zones. Other commenters, principally representatives of covered fuel providers and fleet administrators, recommended that DOE adopt a 100 percent central fueling definition. Most of these commenters argued that DOE should adopt the EPA definition to minimize confusion and regulatory burdens on fleets required to comply with both programs.

After considering the comments, DOE decided to retain the 75 percent central fueling standard in the final rule. DOE's decision to not adopt EPA's definition of ''centrally fueled'' is rooted in statutory differences between the Clean Fuel Fleet Program, administered by EPA, and the Department's Alternative Fuel Transportation Program.

EPA's program applies in certain non-attainment areas with the goal of improving the air quality in those areas. EPA's explanation of its final rule shows that EPA did not look favorably on the inclusion of dual-fueled vehicles in the Clean Fuel Fleet Program. EPA concluded that the purchase of flexible-fuel or dual-fueled vehicles would achieve significantly less emissions reduction than dedicated alternative fueled vehicles, which operate on a single type of fuel. 60 FR 64681. EPA expressly acknowledged that, by adopting a 100 percent refueling standard, fewer vehicles would be covered by its program.

By contrast, DOE's Alternative Fuel Transportation Program applies throughout the Nation, and its primary goal is to reduce the nation's dependence on petroleum as a transportation fuel. DOE's program, as it applies to covered fuel providers, is not limited to fleets operating in large metropolitan statistical areas. ''Alternative fueled vehicle'' is defined in section 301(2) of the Act to include a dual fueled vehicle. This shows that Congress anticipated that alternative fuels would not be available to all covered vehicles all of the time. This is also reflected in section 501(a)(4), which requires alternative fueled vehicles acquired by covered fuel providers to operate solely on alternative fuels except when operating in an area where the appropriate alternative fuel is unavailable. 42 U.S.C. § 13251(a)(4).

DOE believes that allowing the use of all types of alternative fueled vehicles, not just dedicated vehicles, provides flexibility to fleet operators in acquiring vehicles that meet their normal requirements and practices. This is especially important during the initial years of the program, when the fueling infrastructure for alternative fueled vehicles will not be fully developed.

In addition, vehicles acquired under DOE's program are required to operate on fuels that are ''substantially not petroleum.'' See section 301(2) of the Act (definition of ''alternative fuel''). By contrast, EPA's Clean Fuel Fleet Program may include vehicles that use reformulated gasoline and clean diesel fuel. The greater availability of reformulated gasoline and clean diesel makes the 100 percent refueling standard more reasonable in the EPA program.

In summary, DOE believes a 100 percent standard for the definition of ''centrally fueled'' and ''capable of being centrally fueled'' would unduly compromise the Energy Policy Act's goals of displacing petroleum and fostering development of an alternative fuels infrastructure.

The statutory definition of ''fleet'' requires that a minimum of 20 vehicles

be ''owned, operated, leased, or otherwise controlled by a governmental entity or other person.'' 42 U.S.C. 13211(9). Section 490.2 contains a definition of ''lease'' that excludes vehicles under rental agreements of less than 120 days. This provision is consistent with the EPA regulations. As EPA explained, a person does not have the same level of control over a vehicle lease for a short period of time, and the 120-day period takes into account short term variations in fleet operations and the number of fleet vehicles that ought not to trigger the vehicle acquisition mandates. 58 FR at 64687.

The statutory definition of ''fleet'' uses the concept of ''control'' to establish the guidelines for attributing vehicles to a fleet for the purposes of determining whether the 50-vehicle minimum is satisfied. There is similar language in the definition of ''covered fleet'' which applies to the EPA fleet program requirement. EPA has promulgated a definition of ''control'' (40 CFR § 88.302–94), which DOE has adopted with slight modifications to omit language not relevant to DOE's program.

Other Definitions

Acquire. The Department was asked to define the term ''acquire'' by a few commenters. They were uncertain as to whether the term referred to ordering a vehicle, paying for a vehicle, or taking possession of a vehicle. In § 490.2, the Department defines ''acquire'' to mean taking into possession or control, which is a dictionary definition. Thus, a vehicle is acquired when it is taken into possession or control.

After-Market Converted Vehicle. Section 490.2 defines the term ''after-market converted vehicle'' as a new or used conventional fuel Original Equipment Manufacturer vehicle that has been converted to operate on alternative fuel by an after-market converter. This converter must be in compliance with all Federal, State, and local laws at the time of conversion. After-market converted vehicles differ from Original Equipment Manufacturer converted vehicles with respect to which company warrants the conversion and its components. In the case of an Original Equipment Manufacturer converted vehicle, the vehicle is converted prior to first sale by a manufacturer or conversion company under contract to the manufacturer to convert Original Equipment Manufacturer vehicles, and is then offered by the Original Equipment Manufacturer, with warranty coverage through the Original Equipment Manufacturer, for sale to the general public. In the case of an after-market converted vehicle, the conversion is performed by an after-market converter, who provides the warranty for the vehicle conversion and the conversion kit.

Alternative Fuel. Section 490.2 defines the term ''alternative fuel'' consistent with the definition of that term in section 301 of the Act.

Several commenters requested that propane (liquefied petroleum gas) be removed from the list of fuels in the definition of ''alternative fuel'' in § 490.2. The definition of this term tracks section 301(2) of the Act, which lists fuels that are alternative fuels and grants the Secretary the authority to add fuels to the definition of ''alternative fuel'', by rule, if they meet certain conditions. However, section 301(2) does not authorize the Secretary to delete any fuel listed in the statutory definition. Thus, the Department has not removed liquefied petroleum gas (or propane) from the definition of ''alternative fuel.''

Many commenters requested that biodiesel, and biodiesel blends, be included in the Department's regulatory definition of ''alternative fuel'' because biodiesel is a fuel ''(other than alcohol) derived from biological materials.'' As described in the comments, biodiesel is produced from vegetable oils, such as soybean oil, which are biological materials. The commenters also stated that biodiesel offers significant reduction in harmful tailpipe emissions of hydrocarbons, carbon monoxide and particulate matter; is essentially free of sulfur and harmful aromatics; and is non-toxic and biodegradable. These commenters also submitted information to show that biodiesel can be made wholly from domestic products, and that it has a positive energy balance in its production process.

After carefully reviewing all of the comments on this issue, the Department included in its July 31, 1995 Federal Register notice its tentative conclusion that neat (or 100 percent) biodiesel meets the criteria in section 301(2) for an alternative fuel; namely, that it is a fuel, other than alcohol, that is derived from biological materials. Several comments were received in support of this designation. No comments were received in opposition to this position. For the reasons set forth in the July 31 notice, the Department has revised the definition of ''alternative fuel'' in section 490.2 to include neat biodiesel. It is noted, however, that a DOE interpretation of ''alternative fuel'' to include neat biodiesel does not relieve biodiesel manufacturers from any Federal, State, local government, or automobile manufacturer requirements that may apply to the production and use of biodiesel for motor fuel.

In its July 31, 1995 notice, DOE stated that it did not intend to include mixtures or blends of biodiesel in the definition of ''alternative fuel'' in this rulemaking. DOE stated that more study is required before a determination on biodiesel blends can be made. After reviewing all of the comments on this issue, DOE has concluded than an additional rulemaking proceeding is required to develop the information needed to reach a conclusion on which, if any, mixtures or blends of biodiesel should be included in the definition of ''alternative fuel.''

One commenter stated that neat biodiesel may not be the only biologically derived fuel that can be classified as an ''alternative fuel,'' and requested clarification that the inclusion of neat biodiesel in the definition would not preclude other biologically derived fuels from receiving this designation. The Department is not currently aware of any other biologically derived fuels that are not already included in the definition of ''alternative fuel.'' However, if DOE were asked to designate another biologically derived fuel as an alternative fuel, the fuel would be evaluated on its merits to determine if it meets the criteria for an alternative fuel.

In its July 31, 1995, Federal Register notice, the Department invited interested persons to submit data, reports and analyses in support of previous requests that DOE revise the definition of ''alternative fuel'' to include alcohol blends containing no less than 70 percent alcohol by volume. In response, the Department received two submissions containing information relevant to this issue. These submissions show that decreasing the level of alcohol can improve the cold start ability of alcohol fueled vehicles. The data shows that by decreasing the level of alcohol to 70%, some vehicles are able to start in weather 11 degrees F colder than they were previously able. But the data and reports of field operation of these vehicles also show that vehicles operating on 85% blends of ethanol or methanol can start in winter conditions if certain procedures are followed and certain precautions taken. These precautions and procedures are recommended for cold-start of vehicles irrespective of what fuels they operate on. In addition, it appears that several different combinations of non-alcohol components with varying Reid Vapor Pressures are capable of providing cold

start performance at the automakers' target temperature.

After carefully analyzing the information that has been submitted, the Department has concluded that it needs additional information before it can determine that 70 percent alcohol blends are required for the cold-start of alcohol fueled vehicles. Therefore, the definition of ''alternative fuel'' in this rule retains the statutory 85 percent standard for alcohol fuels. A separate rulemaking, initiated by DOE or following a petition filed pursuant to § 490.6 of this part, will permit the issues related to lowering the alcohol percentage to be fully explored.

DOE received many comments arguing that reformulated gasoline should be added to the list of fuels included in the definition of '' alternative fuel'' in § 490.2. Commenters stated that use of reformulated gasoline contributes to reduction of air pollutants and, because of its increased oxygen content, displaces petroleum. Some of these commenters argued that reformulated gasoline meets the statutory test of being ''substantially not petroleum.'' Some commenters argued that including reformulated gasoline in the definition of ''alternative fuel'' would be consistent with Congress' allowance of reformulated gasoline under EPA's clean fuel fleet program. One commenter argued that use of reformulated gasoline should be permitted in air quality non-attainment areas, but not elsewhere, in order to reduce the regulatory burden on fleets in those areas. Other commenters stated that allowing reformulated gasoline in the DOE program would help industry recoup its investment in the production and marketing of reformulated gasoline to meet air quality goals. Some commenters recommended that DOE should seek amendment of the Energy Policy Act to correct the omission of reformulated gasoline from the list of fuels included in the statutory definition of ''alternative fuel.''

DOE also received many comments opposed to including reformulated gasoline in the definition of ''alternative fuel'' in § 490.2. These commenters argued that reformulated gasoline is substantially petroleum in composition, and that recognizing it as an alternative fuel would not contribute to development of non-petroleum fueling and vehicle technologies. Commenters stated that although reformulated gasoline is a low-cost way to reduce hydrocarbon emissions, its use will not significantly further the Act's petroleum displacement goals.

The Department adheres to its view that reformulated gasoline does not meet the Act's criteria for designation as an ''alternative fuel.'' The percentage of petroleum in reformulated gasoline is too large to warrant finding that it is ''substantially not petroleum,'' which is required for classifying a fuel as an ''alternative fuel'' under section 301(2) of the Act. The notice of proposed rulemaking stated that reformulated gasoline is comprised of over 90 percent petroleum. A commenter who represents the petroleum industry disputed this figure, and stated that reformulated gasoline only contains 83 percent petroleum. Even assuming that the commenter's figure of 83 percent is correct, that percent petroleum volume is still too large to warrant a determination that reformulated gasoline is ''substantially not petroleum.''

Several comments were received requesting that low-sulphur diesel and clean diesel be included as alternative fuels. The Department has not adopted these recommendations because low-sulphur diesel and clean diesel are fuels comprised almost totally of petroleum, and thus, cannot be considered to be substantially not petroleum.

Covered Person. Section 490.2 defines the term ''covered person'' consistent with the definition of that term in section 301 of the Act.

Dealer Demonstration Vehicles. No comments were received on the definition of ''dealer demonstration vehicle.'' Section 490.2 follows the EPA definition of the term ''dealer demonstration vehicle'' found at 40 CFR § 88.302–94. EPA defines ''dealer demonstration vehicle'' as any vehicle that is operated by a motor vehicle dealer solely for the purpose of promoting motor vehicle sales, either on the sales lot or through other marketing or sales promotions, or for permitting potential purchasers to drive the vehicle for pre-purchase or pre-lease evaluation. Vehicles held by dealers for their own business purposes, such as shuttle buses, loaner vehicles, or other repair or business-related vehicles are not exempt, unless they are also offered for retail sale as part of the dealer stock or are rotated through the fleet back to the dealer stock.

Dedicated Vehicle. The notice of proposed rulemaking included the statutory definition of ''dedicated vehicle'' in section 301(6) of the Act, 42 U.S.C. 13211(6). Section 301(6) provides that a dedicated vehicle is either: (i) a ''dedicated automobile'' as defined in section 513(h)(1)(C) of the Motor Vehicle Information and Cost Savings Act, codified at 49 U.S.C. 32901(a)(7), or (ii) a motor vehicle, other than an automobile, that operates solely on alternative fuel.

DOE received no public comments on the proposed definition of ''dedicated vehicle.'' Nevertheless, in the final rule DOE has revised the portion of the definition relating to a ''dedicated automobile'' to include the language of the cross-referenced statute, as a convenience for regulated entities. As defined in the Motor Vehicle Information and Cost Savings Act, a ''dedicated automobile'' means ''an *automobile* that operates only on alternative fuel.'' 49 U.S.C. 32901(a)(7) (emphasis added). DOE interprets the word ''automobile,'' as used in the definition of ''dedicated automobile'' and incorporated by reference in section 301(6), to mean an ''automobile,'' as that term is defined in section 501(1) of the Motor Vehicle Information and Cost Savings Act, codified at 49 U.S.C. 32901(a)(3). DOE has added a definition of ''automobile'' to § 490.2, which is adapted from and is intended to have the same meaning as ''automobile'' defined in section 501(1) of the Motor Vehicle Information and Cost Savings Act.

Dual Fueled Vehicle. Section 301(8) of the Act, 42 U.S.C. 13211(8) defines ''dual fueled vehicle'' as: (i) a dual fueled automobile, as such term is defined in section 513(h)(1)(D) of the Motor Vehicle Information and Cost Savings Act, or (ii) a motor vehicle, other than an automobile, that is capable of operating on alternative fuel and is capable of operating on gasoline or diesel fuel. DOE included the statutory definition in the proposed rule, with slight modifications to make clear that term includes all vehicles that are capable of operating on an alternative fuel and on gasoline or diesel fuel, including those commonly referred to as ''bi-fuel,'' flexible fuel,'' and ''dual fuel'' vehicles.

DOE received public comment on the proposed definition of ''dual fueled'' vehicle. One commenter urged DOE to adopt definitions of ''dual fuel vehicle'' and ''flexible fuel vehicle'' in regulations published by EPA for its Clean Fuel Fleet Program (59 FR 50042, Sept. 30, 1994). DOE cannot adopt this recommendation in its entirety because of differences in the underlying statutes. The Clean Air Act establishes clean alternative fuel standards for flexible fuel vehicles and dual fuel vehicles, 42 U.S.C. 7581. EPA has, in implementing regulations, defined the term ''dual fuel vehicle'' to mean a ''bi-fuel vehicle'' (i.e., one that is engineered and designed to be operated on two fuels, but not a mixture of two or more different fuels) and the term ''flexible

fuel vehicle'' to mean a vehicle that is engineered and designed to be operated on any mixture of two or more different fuels. 59 FR 50045. By contrast, section 301(3) of the Act defines an ''alternative fueled vehicle'' to mean a ''dedicated vehicle'' or a ''dual fueled vehicle.'' Thus, if DOE were to adopt EPA's definition of ''dual fuel vehicle,'' flexible fuel vehicles would be excluded from the definition of ''alternative fueled vehicle,'' and the acquisition of such vehicles would not count for compliance purposes under the Act. There is nothing in the text of the Act or its legislative history that indicates an intent to exclude flexible fuel vehicles from DOE's Alternative Fuel Transportation Program. A flexible fuel vehicle, authorized by the manufacturer to operate on an alternative fuel and on gasoline or diesel, clearly fits within the definition of ''dual fueled vehicle'' in section 301(8).

In response to the comments, DOE has made several changes in the regulatory text to clarify that the statutory term ''dual fueled vehicle'' includes flexible fuel vehicles. The definition of ''dual fueled vehicle'' in § 490.2 has been revised to expressly include flexible fuel vehicles. A definition of ''flexible fuel vehicle'' has been added to § 490.2. The term is defined as ''any motor vehicle engineered and designed to operate on any mixture of two or more different fuels.'' This definition is taken from EPA's regulation on clean-fuel vehicles, 40 CFR 88.102–94. The definition of ''alternative fueled vehicle'' in § 490.2 also has been revised to clarify that flexible fuel vehicles are included.

Several commenters asked the Department to clarify whether vehicles that are capable of operating on neat biodiesel and diesel can be considered dual-fueled vehicles. A bi-fuel vehicle that is authorized by the vehicle manufacturer to be operated on neat biodiesel *or* diesel would meet the definition of a dual-fueled vehicle. A flexible fuel vehicle that is authorized by the vehicle manufacturer to be operated on neat biodiesel *or* diesel also would meet the definition of a dual-fueled vehicle. These vehicles would meet this definition principally because they are capable of operating on an ''alternative fuel'' as defined by section 301(2) of the Act, in addition to being operated on a petroleum-based fuel. As explained earlier in the discussion of the definition of ''alternative fuel,'' DOE has concluded that an additional rulemaking is needed to reach a conclusion on which, if any, mixtures of biodiesel should be included in the definition of ''alternative fuel.'' Consequently, until such a rulemaking designates a mixture of biodiesel and diesel as an alternative fuel, a vehicle powered by such a mixture or conventional diesel would not qualify as a ''dual fueled vehicle.''

Emergency Motor Vehicles. Section 490.2 adopts EPA's definition for the term ''emergency vehicle'' in 40 CFR § 88.302–94. EPA defines ''emergency vehicle'' to mean any vehicle that is legally authorized by a governmental authority to exceed the speed limit to transport people and equipment to and from situations in which speed is required to save lives or property, such as a rescue vehicle, fire truck or ambulance. These vehicles normally have red and/or blue flashing lights and sirens. DOE is relying on the speed limit criterion because this is the way that many States define ''emergency vehicles.''

The Department received comments from utilities asking DOE to determine that vehicles used for emergency restoration of utility service are covered by the definition of ''emergency motor vehicles.'' These vehicles are not normally considered emergency motor vehicles because their primary function does not include exceeding the speed limit to transport people and equipment to and from situations in which speed is required to save lives or property. For this reason, they are not usually equipped with red and/or blue flashing lights and sirens. Emergency power restoration vehicles are not excluded from the definition of ''fleet'' unless, on a vehicle-by-vehicle basis, they are specifically and legally authorized by a governmental authority to exceed speed limits when responding to emergencies.

Law Enforcement Motor Vehicles. Section 490.2 adopts EPA's definition of the term ''law enforcement vehicle'' found at 40 CFR § 88.302–94. EPA defines ''law enforcement vehicle'' to mean any vehicle which is primarily operated by a civilian or military police officer or sheriff, or by personnel of the Federal Bureau of Investigation, the Drug Enforcement Administration, or other law enforcement agencies of the Federal Government, or by State highway patrols, municipal law enforcement, or other similar law enforcement agencies, and which is used for the purpose of law enforcement activities including, but not limited to, chase, apprehension, surveillance, or patrol of people engaged in or potentially engaged in unlawful activities.

This definition is intended to clarify the difference between law enforcement motor vehicles and vehicles used for other security purposes. Under this definition, a vehicle is considered to be a law enforcement motor vehicle by virtue of its use for official law enforcement purposes, as authorized by local, State or Federal government authority. Private security vehicles are not excluded from the definition of ''fleet'' unless, through a contract or other arrangement, they are used by a law enforcement agency for the purposes described above.

One commenter inquired whether vehicles operated by a State corrections department and used for transport of prisoners or for administrative duties would be considered a ''law enforcement motor vehicle.'' DOE concludes that these vehicles are law enforcement motor vehicles because State corrections departments are engaged in law enforcement activities.

Lease. No comments critical of the definition of ''lease'' were received. Section 490.2 defines the term ''lease'' to mean use of a vehicle for transportation purposes pursuant to a rental contract or similar arrangement, and the term of such contract or similar arrangement is for a period of 120 days or more. This definition closely tracks EPA's definition of ''owned or operated, leased or otherwise controlled by such person,'' found at 40 CFR § 88.302–94.

Light Duty Vehicle. One commenter inquired whether a vehicle's gross vehicle weight rating is to be determined before or after conversion to operate on alternative fuel. DOE has determined that the gross vehicle weight rating applies to newly acquired vehicles prior to conversion and has amended the definition of the term ''light duty motor vehicle'' to reflect this determination.

Model Year. No comments critical of the definition of ''model year'' were received. Section 490.2 defines the term ''model year'' for the purposes of vehicle acquisition requirements as September 1 of the previous calendar year through August 31. This definition closely tracks EPA's definition of ''model year,'' found at 40 CFR § 88.302–94. The model year, thus defined, coincides with the period in which most automobile manufacturers introduce their new annual models, which should facilitate compliance since covered persons and State fleets can make their acquisition plans regarding alternative fueled vehicles when they make plans for acquiring new model year vehicles. For compliance purposes, the definition of model year is important to ensure that all fleets and covered persons acquire vehicles based on the same annual period. Thus, any new vehicles that are acquired by a fleet or covered person between September 1 and August 31 of

the next year are counted and used as the basis for determining the acquisition requirement of the same year.

Motor Vehicle. The notice of proposed rulemaking included the definition of ''motor vehicle'' in section 301(13) of the Act, 42 U.S.C. 13211(13), which incorporates the definition of ''motor vehicle'' in section 216(2) of the Clean Air Act, 42 U.S.C. 7550(2). In this rule, DOE has included the text of section 216(2) so that regulated entities will not have to consult another source for the meaning of this term. A comment was received that requested that non-road vehicles be expressly excluded from the definition of ''motor vehicle.'' The Department has amended the definition of ''motor vehicle'' to make clear that non-road vehicles are excluded. A definition of ''non-road vehicle,'' which is drawn from section 412(b) of the Act, has been added to this section.

Non-road Vehicle. This term is defined to mean a vehicle not licensed for on-road use, including vehicles used principally for industrial, farming or commercial use, for rail transportation, at an airport, for marine purposes and other vehicles.

Original Equipment Manufacturer Vehicle. Section 490.2 defines the term ''Original Equipment Manufacturer Vehicle'' to mean a vehicle engineered, designed, produced and warranted by an Original Equipment Manufacturer. This term applies to conventionally fueled Original Equipment Manufacturer vehicles as well as to alternative fueled vehicles. Included in this definition are vehicles that were conventionally fueled Original Equipment Manufacturer vehicles, but were converted prior to sale by the Original Equipment Manufacturer, through a contract with a conversion company, to operate on an alternative fuel and which are covered under the Original Equipment Manufacturer warranty. The proposed definition did not reference Original Equipment Manufacturer warranties. This omission was pointed out by a commenter, and it is corrected in this rule.

Used Primarily. The definitions of the terms ''fleet'' and ''covered person'' include the requirement that a vehicle must be ''used primarily'' within a metropolitan statistical area to be included in a ''fleet.'' In response to comments requesting clarification the Department has defined ''used primarily'' to mean that a majority (i.e., over 50 percent) of a vehicle's total annual miles are accumulated within a covered metropolitan statistical or consolidated metropolitan statistical area.

Section 490.3 Excluded Vehicles

Section 490.3 sets forth the categories of vehicles that are not counted in determining the existence of a ''fleet'' as defined in § 490.2. Some of the exclusions are discrete categories defined in § 490.2, including ''dealer demonstration vehicle,'' ''emergency vehicle,'' and ''law enforcement vehicle.''

The statutory definition of ''fleet'' also excludes motor vehicles held for lease or rental to the general public; motor vehicles used for motor vehicle manufacturer product evaluations or tests; motor vehicles which under normal operations are garaged at personal residences at night; and motor vehicles that the Secretary of Defense certifies must be exempt for national security reasons. This latter category was not subject to public comment and is self-explanatory. The other categories, however, either were subject to comment or require some explanation.

DOE has adopted EPA's interpretation of ''motor vehicles held for lease or rental to the general public.'' EPA interprets the phrase to mean a vehicle that is owned or controlled primarily for the purpose of short-term rental or extended-term leasing, without a driver, pursuant to a contract. 40 CFR § 88.302–94. Under this definition, a firm will not be found to ''lease'' its vehicles to its employees unless the vehicles are owned primarily for leasing them to the general public and they are leased pursuant to formal contracts which give control of the vehicle to the lessee. No critical comments were received on this interpretation.

DOE also has adopted EPA's interpretation of ''motor vehicles used for motor vehicle manufacturer product evaluations and tests,'' which are excluded from the definition of ''fleet.'' Section 490.3 follows EPA's definition of the phrase ''vehicle used for motor vehicle manufacturer product evaluations and tests'' at 40 CFR § 88.302–94. It is the intent of this provision to exclude vehicles which are used by an Original Equipment Manufacturer for production control or quality control reasons. No critical comments were received on this interpretation.

DOE has only partially adopted EPA's definition of ''motor vehicles which under normal operations are garaged at personal residences at night.'' The notice of proposed rulemaking included this statutory language in § 490.2. A number of commenters criticized DOE for not adopting all of EPA's definitions, and one commenter specifically urged DOE to adopt EPA's definition of this phrase. EPA defined the nearly identical statutory language to mean ''a vehicle that, when it is not in use, is normally parked at the personal residence of the individual who usually operates it, rather than at a central refueling, maintenance, and/or business location.'' 40 CFR § 88.302–94. EPA concluded that the words ''at night'' in section 241(6) of the Clean Air Act did not preclude extending the exclusion to persons who work at night. 58 FR 64679, 64690. DOE believes that this is a reasonable interpretation of the statutory phrase and, in light of the comments urging consistency in definitions, has decided to adopt the EPA language in § 490.2.

A few commenters also pointed out that some vehicles that are garaged at personal residences of employees overnight are in fact centrally fueled, and they urged DOE not to exclude such vehicles from a ''fleet.'' EPA, in its definition, did not exclude a vehicle that was in fact centrally fueled, because the relevant Clean Air Act provision refers only to a vehicle which ''is capable of being centrally fueled.'' 58 FR 64679, 64690. By contrast, the definition of ''fleet'' in section 301(9) of the Act excludes a vehicle garaged at a personal residence from the definition, regardless of whether it is centrally fueled or capable of being centrally fueled. Therefore, DOE has not adopted that portion of EPA's definition.

Fleet operators and covered persons should subtract vehicles in these excluded categories from the total number of new light duty vehicles to be acquired in a model year to determine the basis for calculating the number of alternative fueled vehicles they are required to acquire in the model year.

Example: A covered person is going to acquire 105 new light duty vehicles in model year 1997. Of these 105 vehicles, five are vehicles in excluded categories. To determine how many alternative fueled vehicles must be acquired the covered person shall make the following calculation: [(Number of new light duty vehicles to be acquired)—(Number of new light duty vehicles in excluded categories)] × (Acquisition percentage for that model year). In this example, the covered person is required to acquire 30 alternative fueled vehicles in model year 1997 {[(105) − (5)] × (.30) = 30}.

Section 490.5 Requests for an Interpretive Ruling

Section 490.5 establishes a process for States and covered persons to obtain DOE interpretive rulings as to how the Department intends to construe and apply its regulations to particular factual situations, and for whom other procedures such as petitions for

exemption are irrelevant. One commenter objected to this provision, stating that it will lead to inconsistencies in implementation. DOE does not agree with this comment. Publicly available interpretive rulings should promote uniformity in implementation, even though any interpretive ruling that the Department issues would apply only to the person who requested it.

Section 490.7 Relationship to Other Law

Section 490.7 makes a declaratory statement to avoid arguments that provisions of part 490, by implication, authorize acquisition of vehicles, conversion of vehicles, or use of fuels as motor fuel in a manner that does not comply with other Federal, State, or local laws.

B. Subpart B—[Reserved]

C. Subpart C—Mandatory State Fleet Program

Section 490.201 Alternative Fueled Vehicle Acquisition Mandate Schedule

Section 490.201 sets forth the requirements, subject to some exemptions, for the percentage of new light duty motor vehicles that must be alternative fueled vehicles when acquired for State fleets under the Mandatory State Fleet Program.

In response to comments that inquired about what would happen if a State agency grew in size or moved its vehicle operations to one of the MSAs listed in Appendix A to subpart A, the Department has added paragraph (d). Paragraph (d) states that if, in the future, a State agency becomes subject to this subpart because it owns, operates or controls a fleet, the State agency shall start acquiring alternative fueled vehicles according to the schedule percentage in effect for the next model year. For example, if a State agency first owns, operates or controls a fleet in model year 1998, then for model year 1999, 25 percent of the State agency's new light duty motor vehicles acquired for its fleet should be alternative fueled vehicles. However, paragraph (d) also recognizes that, in some cases, State agencies that are newly required to acquire alternative fueled vehicles may qualify under section 490.204 for an exemption or reduction of the acquisition percentage. One commenter questioned the rounding convention in the proposed rule for calculating acquisition requirements. After reconsidering this issue, DOE has revised paragraph (c) to provide for rounding up or down to the next whole number, depending on whether the fraction is equal to or greater than one half or is less than one half.

Section 490.202 Acquisitions Satisfying the Mandate

Section 490.202 provides in substance that an acquisition of an alternative fueled vehicle, regardless of the year of manufacture, counts toward satisfaction of the vehicle acquisition mandate. Such a vehicle would be new to the fleet operator. Credits acquired under subpart F also count toward satisfaction of the mandate.

DOE received many comments opposed to the proposed rule's requirement that new vehicles must be converted before they are placed into service in a fleet. The Department has revised § 490.202(a) to allow States and State agencies to convert newly acquired Original Equipment Manufacturer vehicles within four months after vehicle acquisition. The basis for the 4-month period for conversion of newly acquired vehicles is explained in the discussion of § 490.305 in this Supplementary Information section. Section 490.305 applies to covered fuel providers, but its provisions are the same as those in § 490.202. Many fuel providers also objected to the proposal to require vehicles to be converted prior to being placed into service in a fleet and, to avoid redundancy, DOE addresses all of the comments on this issue in the discussion of § 490.305.

The Department would prefer that these vehicles be converted in the same model year that they are acquired, but realizes that this is not always possible. Thus, a vehicle acquired in MY 1997 could be converted during MY 1998 (beginning on September 1, 1997), and count towards compliance in MY 1997, if the conversion occurred within four months of the vehicle's acquisition. However, those conversions could not be counted for compliance with the MY 1998 requirements.

A few comments pointed out that the proposed rule did not include any statement about a State not being required to acquire converted vehicles, as provided in section 507(j) of the Act. The Department has not revised the rule in response to these comments because it sees no need to restate the statutory provision in this final rule.

Many commenters requested that the Department allow the conversion of vehicles already in service in a fleet to count towards compliance once the rule goes into effect. The proposed rule would not have allowed the conversion of existing fleet vehicles to count. Upon further analysis, the Department has decided that is was correct in not allowing these vehicles to count towards compliance. Section 507(o) specifically refers to ''* * * percentages of *new* light duty motor vehicles acquired annually * * *'' 42 U.S.C. 13257(o) (emphasis added). The Act's focus on vehicles new to the regulated entity indicates a congressional intent to regulate inventory turnover and stimulate production of new alternative fueled vehicles. Conversion of existing fleet vehicles could seriously undermine those goals.

Although conversion of an existing fleet vehicle does not qualify as an acquisition under the Act, DOE (as explained in the discussion of § 490.502 in Subpart F) will allocate credits for motor vehicles that were purchased or leased by regulated entities on or after October 24, 1992, and converted to alternative fueled vehicles before the effective date of the applicable acquisition requirements. For purposes of calculating credits, DOE will not apply the four-month time limit to conversions that occurred before the effective date of this rule.

Section 490.203 Light Duty Alternative Fueled Vehicle Plan

The Act provides an alternative means of compliance for States. In lieu of a State meeting the acquisition requirements of § 490.201 solely through State acquisitions, a State may comply with a Light Duty Alternative Fueled Vehicle Plan submitted by the State and approved by DOE. Under such an alternative compliance plan, a State may satisfy its acquisition requirements with the voluntary participation of non-covered State, municipal, and private fleets. However, section 507(o)(2)(A) of the Act states that any State plan must provide for the acquisition of light duty motor vehicles by State, local and private fleets, which in aggregate meet or exceed the applicable vehicle percentage for any given model year.

Section 490.203(3) provides that any acquisition of light duty alternative fueled vehicles for a State may be part of the Plan, irrespective of whether the vehicles are in the categories of vehicles excluded from the definition of ''fleet,'' as enumerated in § 490.3. This allows for law enforcement vehicles, or other vehicles excluded from the definition of ''fleet'' to be part of a Light Duty Alternative Fueled Vehicle Plan.

Unless covered by an exemption, a State is subject to the requirements in § 490.201. A State also may be required to comply with the requirements of § 490.201 if a State plan participant (such as a municipality) fails to fulfill its commitments under the Plan. However, if the State is able to find a

substitute participant, then the State may submit to DOE for approval an amendment to the Plan.

Paragraph (b) of this section requires States to monitor and verify on an ongoing basis the implementation of its Plan. This is to ensure that all participants in the Plan are indeed in compliance, and that at the end of the model year, all requirements will have been met. If for whatever reasons a participant is unable to fulfill its commitments, the State is obligated to find a substitute participant before the end of the year.

Paragraph (c) establishes a general requirement that a State must submit to DOE, for approval, its Light Duty Alternative Fueled Vehicle Plan no later than the June 1 prior to the model year(s) covered by the Plan. However, because section 507(o)(2)(A) of the Act specifies that States may submit their Plan to the Department within 12 months after final rule promulgation, DOE will not require States to submit a Plan for model year 1996, and a plan for model year 1997 may be submitted by March 14, 1997. After MY 1997, the Department believes that a State should know by June 1 the number and type of light duty motor vehicles it plans to acquire during the upcoming model year and should have begun the procurement process for these vehicles.

A few commenters requested that States opting to comply through these alternative compliance plans be allowed to use gallons of petroleum displaced, instead of alternative fueled vehicles acquired, as the measure of compliance. DOE has not adopted this recommendation because section 507(o)(2)(A) requires each State alternative compliance plan to provide for the acquisition of light duty motor vehicles ''in numbers greater than or equal to the number of State alternative fueled vehicles required pursuant to [the acquisition schedule in section 507(o)(1)].'' Thus, DOE may not adopt a petroleum displacement standard, in lieu of requiring alternative fueled vehicle acquisitions, for compliance under State alternative compliance plans.

Other comments asked DOE to clarify the meaning of ''voluntary'' acquisition. DOE has determined that ''voluntary'' acquisition occurs when an entity, that is not required by the Act to acquire alternative fueled vehicles, acquires alternative fueled vehicles. Because municipalities and private companies, other than those determined to be covered persons subject to the requirements under section 501, are not currently required to acquire alternative fueled vehicles, any acquisition of alternative fueled vehicles by these entities would be voluntary. In addition, the acquisition of alternative fueled vehicles by a State agency that is not an operator of a ''fleet,'' because it does not operate at least 20 vehicles in any of the MSAs/CMSAs found in Appendix A to subpart A, would be voluntary. The acquisition of vehicles in categories of excluded vehicles under § 490.3 also would be voluntary.

A few comments raised the possibility of double counting of vehicles by private and local government fleets, when and if they are required to acquire alternative fueled vehicles under a future rulemaking under section 507 (b) or (g) of the Act. The possibility of the future allocation of credits for acquisitions by municipal and private fleets depends upon a DOE finding, by rule, that a municipal or private fleet program is necessary to meet the Act's fuel replacement goals. 42 U.S.C. 13257 (b), (e), (f). DOE has not begun a rulemaking to determine whether to make such a finding. Initiation of such a program is not a foregone conclusion. Therefore, participation in a State alternative compliance plan will not conflict with any present, and possibly future, compliance obligations under the Act.

Section 490.204 Process for Granting Exemptions

Section 507(i)(1) of the Act provides that a State may seek exemptions in whole or in part from the annual acquisition percentages in three situations. As interpreted in this final rule, a State may seek exemption if it can demonstrate that—

(1) Alternative fuels that meet the normal requirements and practices of the principal business of the State fleet are not available from fueling sites that will allow the fleet to be centrally fueled in the area where the vehicles are to be operated; or

(2) Alternative fueled vehicles that meet the normal requirements and practices of the principal business of the State fleet are not available for sale or lease commercially on reasonable terms and conditions within the State; or

(3) The application of such requirements would pose an unreasonable financial hardship.

Categories 1 and 2 basically track section 507(i)(1) (A) and (B) of the Act. DOE is aware that all domestic Original Equipment Manufacturers sell or lease vehicles to fleets exclusively through their dealerships, the only exception being fleet sales to the Federal government. Other Original Equipment Manufacturers, such as vehicle manufacturers that do not belong to the American Automobile Manufacturers Association, sell or lease their vehicles directly to the customer without the benefit of a motor vehicle dealer network.

Thus, to receive an exemption based on vehicle unavailability, a State must show that no Original Equipment Manufacturer can deliver alternative fueled vehicles to a State fleet on reasonable terms and conditions that meet the normal requirements and practices of the principal business of the fleet. An applicant for an exemption must establish vehicle unavailability by submitting documentation from vehicle manufacturers or from motor vehicle dealers, as appropriate to its situation. Documentation requirements are explained in the discussion of § 490.308 in this Supplementary Information section.

Comments received from State and local governments and fleet managers regarding the process for granting exemptions because of the unavailability of alternative fueled vehicles or alternative fuels are addressed in the discussion of § 490.308, which deals with exemptions for covered alternative fuel providers. The same statutory criteria apply to granting exemptions to State government fleets (under § 490.204) and to covered fuel providers (under § 490.308) when alternative fueled vehicles or alternative fuels are not available. Therefore, there is no need to duplicate the discussion of the comments and the approach that DOE will take in granting exemptions in these situations.

Regarding category 3, section 507(i)(1)(C) allows States to request an exemption based on unreasonable financial hardship. Some commenters requested clarification as to what qualifies as unreasonable financial hardship. Many of these same commenters suggested the circumstances that should qualify as a financial hardship. Some commenters recommended using a life-cycle cost analysis to determine financial hardship and provided the cost premium and payback period that should be used. One State provided a formula and specific examples of how to use the formula in different circumstances. Some commenters recommended that a financial hardship exemption be granted if an alternative fueled vehicle's initial cost was some factor greater than the cost of a conventionally fueled vehicle. A commenter recommended tying a financial hardship exemption to the national inflation rate. Other commenters suggested that financial hardship should be recognized if the

requirements cause more than a specified percentage increase in the total fleet's annual budget. Another commenter suggested that if a State is required to build a fueling facility, a financial hardship exemption should be granted.

The Department has carefully reviewed all of the comments on this issue and has concluded that ''unreasonable financial hardship,'' as used in section 507(i)(1)(C) of the Act, must be determined on a case-by-case basis. The relevant conditions in States, such as the availability and cost of alternative fuel, will vary at any point in time. Therefore, it is not possible to determine now, by rule, that all States will experience unreasonable financial hardship at some time in the future if, for example, the cost of alternative fueled vehicles is a certain percentage or amount above the cost of conventionally-fueled vehicles.

DOE will evaluate financial hardship exemption requests in light of the budget constraints in the applicant State. For example, some States have multi-year budgets, and funding for the acquisition of alternative fueled vehicles may be insufficient in some model year. That is a situation in which DOE would likely grant at least a partial exemption from the requirements based on financial hardship.

DOE received comments requesting confirmation that partial exemptions may be granted and how they might affect future vehicle purchases. In response, the Department added paragraph (d) which states that exemptions may be granted in whole or in part to a State. When granting an exemption in part, DOE may, depending upon the circumstances, completely relieve a State from a portion of the vehicle acquisition requirements for a model year or require a State to acquire all or some of the exempted vehicles in future years.

Paragraph (g) provides that the Assistant Secretary for Energy Efficiency and Renewable Energy shall grant or deny a request for exemption within 45 days. In order to keep the procedures simple, the Assistant Secretary may act finally for the Department, and there is no requirement to obtain the specific approval of the Secretary. If the Assistant Secretary denies the request for exemption, paragraph (h) further provides that a State may appeal to the Department's Office of Hearings and Appeals, whose decision would be final for the purpose of judicial review. Further discussion on the exemption process is found in section-by-section analysis for the Alternative Fuel Provider Vehicle Acquisition Mandate.

Section 490.205 Reporting Requirements

Section 490.205 requires each State that is subject to the vehicle acquisition mandate to submit an annual report to DOE. This report will assist DOE to determine if a State has met the requirements of this subpart as well as how successfully the goals and requirements of this subpart are being met. One commenter suggested that DOE should require States and fuel providers to report whether a vehicle is dedicated or dual-fueled and the type of fuel the vehicle is capable of operating on. The Department has adopted this recommendation, in new subparagraphs (b)(5) (iv) and (v), because it agrees that this information is needed to assist DOE in carrying out its responsibilities under title V.

DOE received several comments regarding the definition of a State fleet. Some of these comments suggested specific agencies' fleets that should be included in a State fleet. The most common suggestion was that State university and college fleets should be included. Other comments suggested characteristics of agencies for the purpose of determining whether the fleets of these agencies should be classified as a State fleet. A few of the comments suggested that the determination of which agencies are to be included in a State fleet be left up to each individual State.

Based on these comments, DOE has decided to allow each State to determine for itself which agencies operate or control a State fleet for reporting purposes. However, DOE will expect States to follow the common understanding of what constitutes a ''State agency.'' State agencies are usually authorized and funded by the State legislature, receive funding from the State budget, or are situated on State property. Examples of agencies that DOE expects to be classified as State agencies are departments, offices and divisions of State government, State colleges and universities, port authorities, and other State entities.

In addition to allowing States to determine initially which agencies are State agencies, DOE is giving States some leeway in how they report the alternative fueled vehicle acquisitions of the State agencies. Although DOE would prefer one report from each State that aggregates the State's alternative fueled vehicle acquisitions, it is aware that some States may have difficulty aggregating these numbers due to the unique structure of each State. In place of one aggregate report for a State, a State may assign a limited number of State agencies the task of preparing the individual reports for many other State agencies. For example, a State division of general services might prepare and submit the report for its fleet along with reports from the State universities and the State port authority. The State would then submit these separate reports to DOE as its annual report. DOE believes these reporting options will lessen the burden on the States.

For further discussion on reporting requirements, see section 490.309.

D. Subpart D—Alternative Fuel Provider Vehicle Acquisition Mandate

1. Which Alternative Fuel Providers Must Comply With the Alternative Fueled Vehicle Acquisition Mandate

The Energy Policy Act of 1992 defines the class of alternative fuel providers potentially subject to the alternative fueled vehicle acquisition requirements to include persons who qualify as a ''covered person'' under section 301(5) of the Act, 42 U.S.C. 13211(5), and fall within one of the categories of covered alternative fuel providers in section 501(a)(2). 42 U.S.C. 13251(a)(2). The term ''covered person'' is defined in section 301(5) to mean a person that owns, operates, leases, or otherwise controls a ''fleet'' (defined at § 490.2) and a total of at least 50 motor vehicles within the United States. Paragraph (a)(2) of section 501 describes the categories of covered persons subject to the requirements as follows:

(A) A covered person, whose principal business is producing, storing, refining, processing, transporting, distributing, importing, or selling at wholesale or retail any alternative fuel other than electricity;

(B) A non-Federal covered person whose principal business is generating, transmitting, importing, or selling at wholesale or retail electricity; or

(C) A covered person—

(i) Who produces, imports, or produces and imports in combination, an average of 50,000 barrels per day or more of petroleum; and

(ii) A substantial portion of whose business is producing alternative fuels.

42 U.S.C. 13251(a)(2). The final rule interprets the phrase ''principal business'' at § 490.301.

As illustrated in the Appendix to this Supplementary Information, even if an entity meets all of the qualifications for a covered alternative fuel provider under section 501(a)(2), it nevertheless may be excepted from the vehicle acquisition requirements under section 501(a)(3) or exempted by DOE under section 501(a)(5). Under section 501(a)(3)(A), the vehicle acquisition

requirements only apply to an affiliate, division or business unit of a covered person that is substantially engaged in the alternative fuels business. See § 490.304 (see also § 490.301 for definition of ''substantially engaged''). Moreover, under section 501(a)(3)(B), the vehicle acquisition requirements do not apply to any entity whose principal business is transforming alternative fuel into a product other than alternative fuel or consuming such fuel to manufacture a product that is not an alternative fuel. Under section 501(a)(5), DOE may exempt alternative fuel providers from the vehicle acquisition requirements if they can show either that (1) alternative fuels that meet their normal business requirements and practices are not available; or (2) that alternative fueled vehicles that meet their normal business requirements and practices are not offered for purchase or lease on reasonable terms and conditions. See § 490.308.

The term ''substantial portion'' in section 501(a)(2)(C) is a key statutory determinant of whether a covered person that produces or imports petroleum is an alternative fuel provider required to acquire alternative fueled vehicles. Section 490.301 defines the term ''substantial portion'' to mean that at least 30 percent of a covered person's annual gross revenue is derived from the sale of alternative fuels. This definition is different from the one included in DOE's notice of proposed rulemaking.

In its notice of proposed rulemaking, DOE defined the term ''substantial portion'' to mean that at least two percent of a covered person's refinery yield of petroleum products is composed of alternative fuels. DOE explained that it chose the two percent of refinery yield threshold because it represented the average yield for the production of alternative fuels by petroleum refiners, as reported by the Energy Information Administration. 60 FR 10978. DOE received many comments that criticized the proposed definition of ''substantial portion.'' They argued that the two percent of refinery yield was too low a threshold for classifying an entity as a ''covered person.'' Some commenters stated that the two percent refinery yield of petroleum products would impose vehicle acquisition requirements on many refineries that only produce alternative fuels as incidental by-products of the refining process, and that the alternative fuel so produced is not sold as motor fuel. A few of the comments recommended that DOE adopt a percentage of gross revenue derived from the sale of alternative fuels as the basis for the definition of ''substantial portion.'' They pointed out that gross revenue is the measure used for determining whether other alternative fuel providers are ''covered persons'' because their principal business is in alternative fuels. In their view, if gross revenue is used to determine whether an entity's principal business involves alternative fuels, it also should be used for determining whether a petroleum producer or importer has a substantial portion of its business in the production of alternative fuels.

After reviewing these comments, DOE published a notice on July 31, 1995, reopening the comment period to receive public comments on alternative definitions of the term ''substantial portion.'' 60 F.R. 38974 (corrected 60 FR 40539, Aug. 9, 1995). DOE stated that it was persuaded by the comments that a percentage of gross revenue derived from the sale of alternative fuels may be a better measure of an entity's involvement in the alternative fuels business than is a percentage of refinery yield of petroleum products. As pointed out by some commenters, a gross revenue measure can be applied to all producers and importers of petroleum, unlike the percent of refinery yield measure which focuses solely on refining operations.

DOE also invited public comment specifically on the alternative of defining ''substantial portion'' to mean that at least 30 percent of the annual gross revenue of a covered person is derived from the sale of alternative fuels. DOE stated that this percentage of gross revenue appeared to be an appropriate gross revenue threshold for two reasons. First, available information shows that major U.S. energy producing companies historically derive at least 30 percent of their annual gross revenue from the sale of alternative fuels. Major energy producers are typically consolidated or integrated companies that are involved in oil and gas exploration, oil and gas production or importing, petroleum refining and marketing, transportation of products, other energy operations (coal, nuclear and other energy) and non-energy businesses (primarily chemicals). Second, this definition would exclude from the class of covered persons subject to the vehicle acquisition requirements those refiners involved only in petroleum refining and marketing operations and that produce alternative fuels as an incidental by-product of the refining process. DOE specifically requested interested persons to submit data or analysis relevant to this issue.

DOE received approximately 20 comments on the notice inviting comment on possible alternative definitions of ''substantial portion.'' Two commenters argued strenuously that DOE should adhere to the 2% of refinery yield threshold for determining which companies are covered persons. In their view, the 30% gross revenue threshold will exempt too many refineries and, thus, compromise the Act's goal of reducing the nation's dependency on foreign oil. Several petroleum refiners and marketers expressed support for the 30% gross revenue threshold. They stated that the 30% gross revenue test properly describes the class of producers and importers of petroleum that Congress intended to be covered alternative fuel providers.

Several other commenters stated that a 30% of gross revenue threshold is still too expansive. Their principal argument is that Congress intended the alternative fueled vehicle mandates to apply only to entities that deal directly in alternative fuels that are intended for use as motor fuel. One commenter, for example, argued that any definition of ''substantial portion'' must exclude materials that are not sold directly as transportation fuel, such as non-compressed natural gas or other materials that must be chemically or physically altered to be used as transportation fuel. Another commenter stated that the sale of a commodity such as natural gas does not constitute the sale of an ''alternative fuel'' for transportation purposes. This commenter further stated that because even compressed natural gas has several uses, only the sale of compressed natural gas for use in the storage compartment of a motor vehicle would constitute the sale of ''alternative fuel'' under the Act.

After reviewing the comments on this issue and having analyzed the statutory text and its legislative history, DOE has concluded for a variety of reasons that the Act may not be interpreted to limit the alternative fueled vehicle acquisition mandate to entities that deal directly in alternative fuel which is intended for use as motor fuel. First, section 301 defines ''alternative fuel'' to include various materials, including natural gas and electricity, but it does not limit the term to fuel produced or handled for transportation purposes. In this regard, it is significant that ''natural gas,'' rather than ''compressed natural gas'' is included in the definition of ''alternative fuel.'' Second, section 501(a), which imposes the alternative fueled vehicle acquisition requirements on fuel providers, does not expressly

limit coverage to entities that deal in alternative fuel for transportation purposes. Third, the exemptions provided in section 501(a)(3)(B) necessarily imply that Congress did not intend to limit the vehicle acquisition requirements to entities that directly deal in motor fuels. That section exempts entities whose principal business is ''transforming alternative fuels into a product that is not an alternative fuel'' or ''consuming alternative fuels as a feedstock or fuel in the manufacture of a product that is not an alternative fuel.'' These exemptions show that Congress expressly addressed the question of whether there should be an exemption based upon the use of an ''alternative fuel.'' The specification of the two particular exemptions based upon use in a section that elaborately details exceptions implies that Congress did not intend to create, or authorize DOE to create, an exception for all uses of alternative fuels other than transportation purposes.

In addition, the legislative history of the Act is contrary to the interpretation recommended by the petroleum company commenters. The most authoritative source regarding Congress' intent in enacting section 501 is the Conference Report on the Act. That report's only discussion of title V of the Act, the alternative fuels title, deals with precisely this issue:

''The intent of section 501(a)(1) is not to cover all affiliates or divisions of the many large energy companies which have some, but not all, of their corporate units engaged in alternative fuels operations.

''For example, the oil and gas production affiliate or division of a major energy company described in 501(a)(1)(C) would be covered; so might a propane pipeline unit or a natural gas processing division, if the 'substantially engaged' test is met.

''But an oil tanker division, a gasoline marketing affiliate, or a petrochemical unit whose major operations are the production of plastics, for example, would not be covered.

''The Secretary has broad discretion to define the coverage of this provision. For example, he may in his discretion exempt some crude oil-related operations of an oil and gas production affiliate (but not the gas-related operations), or the petrochemical operations of a covered methanol unit (but not the methanol-related business).''

H.R. Rep. 102–1018, 102d Cong., 2d Sess. 387 (1992).

There is no relevant Senate report language. However, the House report on H.R. 776 contains the following explanation of the fuel provider alternative fueled vehicle acquisition mandate, which sheds additional light on the question of whether Congress intended to limit the terms ''substantial portion'' and ''alternative fuel'' to fuels only used for transportation purposes:

''The program applies to firms owning, for example, natural gas pipelines or methanol plants. Their ready access to alternative fuel supplies and their profit motive for developing a growing AFV market makes them an excellent starting point for a successful transition to alternative fuels.''

H.R. Rep. 102–474, 102d Cong., 2d Sess. 187 (1992).

Thus, the relevant conference and committee reports clearly show that Congress foresaw coverage of some oil and gas production affiliates, propane pipeline units, and natural gas processing divisions.

The commenters arguing for a limiting interpretation of ''substantial portion'' or ''alternative fuel'' neither relied on any phrase in the statutory text, nor cited any parts of the above-referenced legislative reports, to support their narrow interpretation of these terms. They relied almost entirely upon floor statements of individual Members of Congress, quoted out of context, which only show that those Members expected the Act to stimulate the development of an alternative fueled vehicle market by various incentives and mandates designed to encourage the replacement of gasoline with alternative transportation fuels. None of the floor statements show an intent to limit the term ''alternative fuel'' to transportation fuel, or ''substantial portion'' to fuel providers exclusively in the alternative transportation fuel business. In comparison to the above-discussed statutory text and report language, the relevance of these floor statements to this question is marginal at best.

A few commenters argued that besides limiting ''covered persons'' to entities that directly deal in motor fuel, DOE should adopt a percentage of gross revenue that is higher than 30 percent. One commenter argued that if 30 percent of gross revenue represents the lowest expected alternative fuel activity of major energy producers, then the gross revenue percentage included in the definition of ''substantial portion'' should be raised to exceed the average of all major energy producers. However, none of the comments provided information that contradicts DOE's conclusion that major energy companies historically derive at least 30 percent of their gross revenue from the sale of alternative fuels. For the reasons given in its July 31, 1995 notice (60 FR 38974), DOE concludes that 30 percent of annual gross revenue derived from the sale of alternative fuels satisfies the ''substantial portion'' test contained in section 501(a)(2)(C)(ii) of the Act.

A few commenters objected to a percentage of gross revenue measure to determine ''substantial portion'' on the ground that it would be more complicated to implement than other measures. One of their main concerns was that DOE may require covered companies to disclose confidential information or institute new accounting systems. DOE does not foresee such a result; instead, it believes coverage can be determined from existing public documents. As several commenters requested, this determination will normally be made using information found in an annual report or an annual Form 10–K report filed with the Securities and Exchange Commission by covered persons.

2. Section-by-Section Discussion

This section discusses comments on specific provisions of subpart D. DOE has also included explanations of some provisions that were not the subject of comment where it believes explanations will assist regulated entities to comply with this subpart. Some nonsubstantive changes from the notice of proposed rulemaking, such as renumbering of rule provisions and nonsubstantive language changes, are not discussed.

Section 490.301 Definitions

Affiliate, Business Unit, and Division. Section 490.301 provides definitions for the terms ''affiliate,'' ''division,'' and ''business unit'' which are used in section 501 of the Act. The first two are dictionary definitions. ''Business unit'' is defined to make clear the grouping of business activities must be similar in autonomy to affiliates and divisions. Based on comments, language has been added to the definitions of ''business unit'' and ''division'' to include the concept of control. One commenter argued that ''affiliate'' should be defined as an entity below the covered person in a corporate structure. DOE has not changed the definition to adopt this narrow interpretation of the meaning of ''affiliate'' because there is no reason to believe that Congress intended DOE to define ''affiliate'' at variance with normal usage.

Alternative Fuels Business. Section 490.301 contains a definition of the term ''alternative fuels business'' which tracks the language of section 501(a)(2). No comments specifically critical of this definition were received.

Normal Requirements and Practices. Section 490.301 defines the term

''normal requirements and practices'' to mean the operating business practices and required conditions under which the principal business of the covered person operates. Several comments were received on this definition. They are addressed in the discussion of section 490.308, which deals with exemptions based on the unavailability of alternative fuel or alternative fueled vehicles.

Principal Business. No comments specifically critical of this definition were received. Section 490.301 defines the term ''principal business'' to mean the largest sales-related gross revenue producing activity. If an organization derives a plurality of gross revenue from sales-related alternative fuels activity, then the organization's principal business is alternative fuels. Sales-related in this context means that the gross revenue does not come from investments such as corporate stocks. As it is used above, plurality does not require that over 50 percent of an organization's sales-related gross revenue be based on activities related to alternative fuels. For example, if an organization derives 35 percent of its sales-related gross revenue from alternative fuels and the next largest single source of sales-related gross revenue comprises 25 percent of the organization's gross revenue, the organization's principal business is alternative fuels.

Substantially Engaged. Section 490.301 defines the term ''substantially engaged'' to mean that a covered person, or affiliate, division, or other business unit thereof, regularly derives sales-related gross revenue from an alternative fuels business. To determine whether a covered person or affiliate, division, or other business unit thereof is ''substantially engaged'' in the alternative fuels business, it is important to look at the involvement the covered person, affiliate, division, or other business unit has with the alternative fuels business. Thus, only that affiliate, division, or business unit that meets the substantially engaged criteria is subject to the acquisition requirements of this program. A comment was received that asked DOE not to include business units engaged in alternative fuel production activities that are incidental to a company's principal business in this definition. An example given was of a covered fuel provider whose principal business is manufacturing denatured ethanol, but which also operates a chain of camping stores that regularly sells one-liter bottles of propane for use with camping stoves. The Department would not consider that division to be substantially engaged in the alternative fuels business if the sale of propane contributes only an incidental or insignificant amount of the gross revenue of the chain of stores. DOE does not think this type of situation is likely to arise. Business units of covered persons that already have been determined to be in the alternative fuels business, and which regularly derive revenue from an alternative fuel business, will normally be substantially engaged in alternative fuels. If rare situations arise in which that is not the case, DOE can address them through case-by-case interpretations. Nonetheless, in light of the comment, DOE has revised the definition of ''substantially engaged'' to clarify that a business unit will not be subject to acquisition requirements if it only derives a negligible amount of revenue from alternative fuels.

The covered person is responsible for clearly defining the specific affiliate, division, or other business unit that is substantially engaged and is therefore subject to the acquisition requirements of this rule. If this designation is not made or is not made clearly, DOE will assume that the entire organization is subject to the acquisition requirements of this rule and will enforce it as such.

Section 490.302 Vehicle Acquisition Mandate Schedule

Section 490.302 sets forth the schedule for the acquisition of light duty motor vehicles which alternative fuel providers must comply with if they are classified as covered persons subject to the requirements.

One commenter argued that calendar years should be used instead of model years in the schedule in paragraph (a). Section 501 specifically requires acquisition on a model year basis. The Department has not changed the time frame for vehicle acquisition.

Paragraph (b) states that, except as provided by section 490.304, these requirements apply to all new light duty vehicles acquired by those business units of covered persons that are substantially engaged in the alternative fuels business, not just those vehicles acquired for the fleets which initially qualified the alternative fuel provider as a subject ''covered person.'' These requirements also apply regardless of where the new vehicles are to be located. For example, if an alternative fuel provider, that is a covered person, is acquiring new light duty motor vehicles for locations that are not within MSAs or CMSAs, these vehicles must be added to those to be acquired for the subject MSA/CMSAs before applying the applicable percentage in paragraph (a) to determine how many of these vehicles must be alternative fueled vehicles.

DOE received many requests to narrow the acquisition requirements to only vehicles acquired for use by fleets in the MSA/CMSAs listed in Appendix A to subpart A. Some commenters stated that DOE has misinterpreted the Act's requirements for ''covered persons'' by concluding that all new light duty vehicles acquired by covered fuel providers must be included in the base for determining the number of alternative fueled vehicles to be acquired in a model year, regardless of whether the vehicles will be operated in fleets in MSAs/CMSAs. These commenters argued that because Congress defined ''covered person'' as a person that owns or otherwise controls a ''fleet,'' which in turn is defined to include only vehicles operated in an MSA or CMSA, Congress intended the MSA/CMSA to be the basic defining criteria for the acquisition requirements. These commenters also discerned no reason why Congress would impose a greater burden on fuel providers than on States. ''Covered person,'' in their view, is simply used in the Act as a convenient way of referring to covered fuel providers.

Electric utilities argued that the acquisition requirements should be limited, as a matter of policy, to fleets operated in MSAs/CMSAs. These commenters stated that forcing covered utilities to purchase alternative fueled vehicles in rural areas, where the alternative fuels infrastructure does not exist, is impractical and likely to undermine development of alternative fueled fleets in urban areas. They stated that there are not likely to be enough electric vehicles to supply both areas, and electric vehicles are not suited for operation in many rural areas because of climate, terrain, and vehicle operational requirements.

DOE does not agree with comments arguing that it has misconstrued the provisions of the Act. Section 501(a) states unambiguously that the acquisition schedules apply to ''the new light duty motor vehicles acquired by a covered person.'' By contrast, the phrase ''for a fleet'' is used throughout section 507 in reference to the vehicle acquisition mandates for State, local, and private fleets. The phrase ''for a fleet'' is not found in section 501. DOE also disagrees with commenters who stated that Congress could not have intended to impose different acquisition requirements on States and alternative fuel providers. The legislative history shows that Congress included a fuel provider mandate because of fuel

providers' ''ready access to alternative fuel supplies.'' See Report on H.R. 776, The Comprehensive National Energy Policy Act, H.R. Rep. 102–474, 102 Cong. 2d Sess. 197 (1992).

DOE has not, therefore, revised paragraph (b) of § 490.302 as requested by these commenters. Nevertheless, DOE recognizes the legitimate concerns of covered persons about acquisition of alternative fueled vehicles in areas outside of the MSAs/CMSAs listed in Appendix A of subpart A. DOE believes the Act and the final rule provide adequate means of providing relief from the requirements when it is justified. As discussed in connection with § 490.308, section 501(a)(5) of the Act prescribes a ''simple and reasonable'' process for granting an exemption from the acquisition requirements if either alternative fueled vehicles or alternative fuels that meet ''the normal requirements and practices of the principal business of [the covered person]'' are not available in the area in which the vehicles are to be operated. 42 U.S.C. 13251(a)(5). In revising § 490.308, DOE has added a central fueling criterion and simplified the process for obtaining an exemption for any covered person whose vehicles are located outside of MSAs/CMSAs. An exemption will be granted if the covered person can show that central fueling does not meet the normal requirements and practices of that person's principal business. In areas outside of MSAs/CMSAs, the covered person is not required to map the location of vehicles operational areas and alternative fuel sites if facts can otherwise be presented to establish that central fueling is incompatible with its normal requirements and practices.

One commenter questioned the rounding convention in the proposed rule for calculating acquisition requirements. After reconsidering this issue, DOE has revised paragraph (c) to provide for rounding up or down to the next whole number, depending on whether the fraction is greater or equal to one half or is less than one half.

In response to comments that inquired about what would happen if an alternative fuel provider grew in size or moved its vehicle operations to one of the MSAs listed in Appendix A to subpart A, the Department has added paragraph (e). Paragraph (e) states that if, in the future, an alternative fuel provider first becomes a covered person subject to the requirements, the fuel provider shall start acquiring alternative fueled vehicles the next model year according to the schedule percentage in effect for that model year. If an alternative fuel provider is newly classified as a covered person in model year 1997, then for model year 1998, 50 percent of the covered person's new light duty motor vehicles must be alternative fueled vehicles. However, DOE expects that some newly classified covered persons will qualify for at least a partial exemption under § 490.308 during the start-up period.

Section 490.303 Who Must Comply

This section tracks section 501(a)(2) of the Act. The criteria for determining which fuel providers are ''covered persons'' subject to the vehicle acquisition mandate are discussed at the beginning of the discussion of subpart F in this Supplementary Information section.

As stated in the notice of proposed rulemaking, municipal gas and electric utilities possessing the required fleet size, fueling characteristics, and located within the specified geographical areas are classified as covered persons under section 501(a)(2)(B). Therefore, they are expected to comply with the requirements of the mandate under § 490.302; they will not be subject to any future municipal fleet mandate imposed by rule under section 507 of the Act. No public comments critical of this interpretation were received.

The Department received comments seeking clarification regarding the coverage of holding companies and their subsidiaries and affiliates. For the purposes of compliance the Department considers the holding company to be the ''covered person'' and the individual companies that it owns to be its affiliates. However, once DOE determines that a holding company is a covered person subject to the vehicle acquisition mandate, DOE will permit the holding company to choose to comply with its acquisition requirements either: (1) By assuming sole responsibility for the holding company's compliance; or (2) by choosing to have its affiliates which are substantially engaged in the alternative fuels business assume the responsibility and report their alternative fueled vehicle acquisitions as separate ''covered persons.'' Holding companies may prefer one option over the other, and DOE does not want to inhibit these holding companies in choosing among options.

Paragraph (b) of § 490.303 describes those covered persons who are excluded by section 501(a)(3)(B) of the Act from having to comply with this subpart. Two categories of covered persons are excluded from the requirements of this regulation: (1) Those who transform alternative fuels into a product that is not an alternative fuel; and (2) those who consume alternative fuels as a feedstock or fuel in the manufacture of a product that is not an alternative fuel.

An example of an excluded person described in paragraph (b)(1) would be a manufacturer of windshield washer fluid. The manufacturer would be classified as an excluded person because it blends an alternative fuel, methanol, in producing windshield washer fluid, which is not an alternative fuel. An example of an excluded person described in paragraph (b)(2) would be a company that burns natural gas to provide a heat source for a manufacturing operation. An example of an excluded person under both paragraphs (b)(1) and (b) (2) would be an entity whose principal business is the production of alcoholic beverages.

Section 490.304 Which New Light Duty Motor Vehicles Are Covered

Under section 501(a)(3)(A) of the Act, if a covered person has more than one affiliate, division, or other business unit, only an affiliate, division, or business unit that is ''substantially engaged in the alternative fuels business'' is subject to the vehicle acquisition mandate. Section 490.304 reflects the provisions of section 501(a)(3)(A), and should be read in conjunction with the definitions of ''affiliate,'' ''division,'' and ''business unit'' in § 490.301.

Comments which opposed the application of the acquisition schedule to all new light duty motor vehicles acquired by a covered person are discussed in the analysis of section 490.302.

Section 490.305 Acquisitions Satisfying the Mandate

Section 490.305 defines the four categories of alternative fueled vehicle acquisitions that will count toward compliance with section 490.302, including the application of alternative fueled vehicle credits under Subpart F. These categories provide flexibility for organizations in acquiring vehicles to meet this regulation. An alternative fueled light duty motor vehicle shall be considered to be new, regardless of the model year it was manufactured, if:

(1) The vehicle is an Original Equipment Manufacturer vehicle capable of operating on alternative fuels and was not previously under the control of the covered person; or

(2) The vehicle is an after-market converted vehicle and was not previously under the control of the covered person; or

(3) The vehicle is an Original Equipment Manufacturer vehicle that has been converted to operate on alternative fuels within four months

after it comes under the control of the covered person.

A vehicle that meets the description of paragraph (1) is one that is manufactured by an Original Equipment Manufacturer to be capable of operating on alternative fuels. For example, if a covered person acquires a 1994 model year flex-fuel light duty motor vehicle during model year 1997, this vehicle is classified as being a new acquisition for that organization. A vehicle that meets the description of paragraph (2) is one that has been converted to be capable of operating on alternative fuels before it is acquired by a covered person.

DOE received many comments, from both covered persons subject to this subpart and States, on its proposal that an Original Equipment Manufacturer vehicle must be converted prior to its first use in service in order to be counted for compliance. The majority of these commenters felt that this requirement was too burdensome on fleet owners and would result in many vehicles sitting idle while awaiting conversion. The comments also stated that because delivery schedules for both vehicles and conversion equipment are unpredictable, it may be difficult to schedule vehicle conversions to occur when the fleets would require them. Other comments stated that many fleet operators break-in a vehicle for up to 1,000 miles in order to determine whether the vehicle has reliability problems, and that they would engage in the same break-in period before converting a vehicle to alternative fuel use. It also was stated that some fleet managers take delivery of vehicles before deciding which specific vehicles to convert.

Most of the comments received on this issue recommended a specific time-frame within which the vehicles should be allowed to be converted. The time-frames recommended ranged from 60 days to 2 years. Various reasons were provided in support of the specific time-frames, including that time was needed for conversion equipment to be certified, scheduling and completing vehicle conversion, and vehicle inspection. Various time-frames were attributed to each activity (1 to 2 months for some activities) as well as estimates of the compound effect a possible delay would have on the total time needed to convert a vehicle.

After analyzing all these comments, DOE has determined that a four month time period after vehicle acquisition should provide sufficient time for a fleet to convert a vehicle to operate on alternative fuels. None of the comments contained information showing that four months is not an adequate time period for a general requirement. In addition, the Department's experience with Federal fleet vehicle conversions shows that a four month time period is more than sufficient to allow for the conversion of vehicles. All Federal vehicles that were converted in this program had their conversions completed within a three month time period.

Many commenters requested the Department to allow the conversion of vehicles already in service in fleets to count towards compliance once the rule goes into effect. The notice of proposed rulemaking would not have allowed the conversion of existing vehicles to count and, after analyzing the comments, DOE has concluded that conversion of existing fleet vehicles is not permitted by the Act. Section 501 of the Act specifically refers to ''* * * new light duty motor vehicles acquired by a covered person * * *'' 42 U.S.C. 13254(a). As explained in the discussion of § 490.202 of this Supplementary Information section, the Department has interpreted this section to mean that vehicles, regardless of the date of manufacture, must be newly acquired by the covered person or State in order to count as acquisitions.

A few comments pointed out that the proposed rule did not include any statement about a fleet operator not being required to acquire converted vehicles, as provided in section 507(j) of the Act. The Department has not revised the rule in response to these comments because it sees no need to restate the statutory provision in this final rule.

Section 490.306 Vehicle Operation Requirements

Section 490.306 tracks section 501(a)(4) of the Act, which requires that all alternative fueled vehicles acquired pursuant to section 501 be operated solely on alternative fuels, except when these vehicles are operating in an area where alternative fuel is not available. DOE received several comments requesting clarification of whether electric-hybrid vehicles would be considered to be operating solely on alternative fuels. In § 490.2, an electric-hybrid vehicle is defined as ''a vehicle primarily powered by an electric motor that draws current from rechargeable storage batteries, fuel cells or other sources of electric current and also relies on a non-electric source of power.'' DOE also notes that the definition of an electric motor vehicle in section 601 of the Act may include an electric-hybrid vehicle. Thus, by definition, an electric-hybrid vehicle is considered to be an electric vehicle. Many electric-hybrid vehicles are designed with a non-electric power source which operates on an alternative fuel, such as a natural gas turbine or a hydrogen fuel cell. DOE recognizes that some electric-hybrid vehicles may be designed to operate on gasoline or diesel engines, but in almost all cases these engines provide supplementary power to the vehicle, while the electricity generator provides the vast majority of the power to the vehicle's electric drivetrain. Therefore, the use of these vehicles in a covered person's fleet meets the requirement for operating solely on alternative fuels.

The Department also received comments seeking clarification as to whether fuel providers that operate dual-fueled vehicles will comply with this section. Inclusion of dual-fueled vehicles in the definition of ''alternative fueled vehicle'' in section 301 and the qualifying phrase in section 501(a)(4) of the Act, show that Congress recognized that some fuel providers may operate in areas where alternative fuels are not available and that if dual-fueled vehicles are used in these territories, they may have to refuel on a petroleum-based fuel. It is clear that, under the Act, the operation of a vehicle on petroleum-based fuel is allowable as long as the dual-fueled vehicle refuels on alternative fuel when it travels in an area where alternative fuel is available.

Section 490.307 Option for Electric Utilities

Section 490.307 deals with the statutory option available to electric utilities. Paragraph (a) tracks the provisions of section 501(c) of the Act, which provides that a covered person whose principal business is generating, transmitting, importing, or selling, at wholesale or retail, electricity has the option of delaying the alternative fuel vehicle acquisition schedule in section 501(a) of the Act until January 1, 1998, if that covered person intends to comply with this regulation by acquiring electric motor vehicles.

DOE received several inquiries as to whether a combination utility, i.e., a utility that provides both natural gas and electricity, would be allowed to comply as two separate entities, thereby allowing the electric side of the utility to apply for the electric utility option. These comments stated that many combination utilities support both electric vehicle and natural gas vehicle market development and wish to comply with the acquisition requirements by acquiring both kinds of vehicles. The comments stated that the proposed rule appeared to require combination utilities to choose one type of vehicle only to comply with their

acquisition requirements, even though it may be contrary to the strategic plans of that utility.

The Department has decided to allow the electric affiliate, division or business unit of a combination utility to apply for a delay in the implementation of its vehicle acquisition schedule until January 1, 1998. Section 490.307 has been revised to reflect this change by adding the words ''or its affiliate, division or business unit'' in paragraphs (a)-(c) and by including these words in new paragraph (d). In such circumstances, a schedule delay would be granted to that portion of the utility whose business is the production, generation, distribution or transmission of electricity.

Paragraph (b) contains the acquisition schedule that an electric utility, or its affiliate, division or other business unit must comply with if the Secretary is notified by the required date.

Many commenters argued that if an electric utility, having chosen the electric utility option, is unable despite a good faith effort to acquire suitable or sufficient numbers of electric vehicles to meet its requirements, DOE should grant that utility a full or partial exemption for the applicable model year. These commenters supported a case-by-case exemption process that requires utilities to make a showing of ''good faith'' efforts to comply. Some commenters stated that it would be appropriate to ''roll over'' compliance obligations to succeeding model years in certain situations (e.g., the inability of automobile manufacturers to produce sufficient numbers of electric vehicles.) However, they stated that rolling over requirements would not be appropriate in other situations (e.g., vehicles that meet the normal business requirements of the fleet operator are not available).

DOE has added paragraph (c) to clarify that electric utilities that choose the electric utility option may apply for an exemption under § 490.308 if alternative fueled vehicles or alternative fuels that meet their normal requirements and practices are not available.

Many of the electric utility commenters also urged DOE to categorically provide that an electric utility that chooses to comply with electric vehicles will never be required to purchase another type of alternative fueled vehicle to satisfy the acquisition mandate. They argued that Congress intended that the fuel of choice for covered fuel providers should be the fuel that fuel provider deals in or sells. They stated that inclusion of the electric utility option shows that Congress intended to allow electric utilities to comply with electric vehicles only. They argued that if an electric utility is ultimately unable to meet the acquisition schedule, it would be inequitable and contrary to the Act for DOE to require the utility to acquire some other type of alternative fueled vehicle. Not only would this force electric utilities to create a market for a competitor's fuel, it would require them to divert investment capital away from development of an electric vehicle market.

DOE is generally sympathetic to these arguments, but the utility commenters did not identify any statutory text or legislative history to support their suggestion for a categorical exemption. Nevertheless, in DOE's view, these arguments may be relevant to requests for exemptions under § 490.308 from the acquisition requirements on the basis that non-electric alternative fueled vehicles do not meet the ''normal requirements and practices'' of their principal business. If utilities can successfully argue that this is generally true, then DOE is prepared to issue an appropriate interpretive rule.

Comment was received inquiring what would happen to the acquisition schedule of an electric utility, or its affiliate, division or other business unit if it chooses to rescind its election of the electric utility option. In response, DOE has added paragraph (d), which provides that an electric utility, or its affiliate, division or other business unit will have to comply with the acquisition schedule in § 490.302, unless otherwise exempt, if it rescinds its election of the option.

Section 490.308 Process for Granting Exemptions

Section 490.308 implements the requirements of section 501(a)(5) of the Act, which provides for a simple and reasonable exemption process for those covered persons seeking exemptions either because alternative fuel is not available or alternative fueled vehicles are not reasonably available. Paragraph (a) describes the procedure that a covered person needs to complete to receive an exemption.

Paragraph (b) contains the criteria for exemption, as interpreted by DOE. The first category of exemption is if any covered person demonstrates to the satisfaction of DOE that alternative fuels that meet the normal requirements and practices of the principal business of the covered person's fleet are not available from fueling sites that will allow the fleet to maintain its centrally fueled character in the area where the vehicles are to be operated. The second category of exemption is if any covered person demonstrates to the satisfaction of DOE that alternative fueled vehicles that meet the normal requirements and practices of the principal business of that person are not available for sale or lease on reasonable terms and conditions in any State included in a MSA/CMSA in which the fleet operates.

These exemptions would be granted for one model year only. To receive exemptions for additional model years, alternative fuel providers must reapply to the Department each year. Exemption decisions will be based on documentation that relates to the criteria for determining the availability of alternative fuels and alternative fueled vehicles.

DOE received many comments on the process for obtaining an exemption when either alternative fuels or alternative fueled vehicles that meet the normal requirements and practices of the principal business are not available. Because the statutory criteria for granting exemptions on these grounds are identical for State government fleets and covered persons, DOE consolidates here its summary of the comments of both States and covered fuel providers.

a. *Discussion of alternative fuel availability.* Most of the comments on unavailability of fuel focused on the explanation of § 490.204(a)(1) and § 490.308(a)(1) in the preamble of the notice of proposed rulemaking, rather than on the text of the proposed rule provisions. In the notice of proposed rulemaking, DOE explained the process for determining fuel availability as follows:

> [A]n alternative fuel provider must map out the operating area and base of operations for its fleet of vehicles. Next, it must locate on the map the alternative fueling facilities within its MSA or CMSA. Then, for each vehicle, it must determine whether any location providing alternative fuel is in the area in which the vehicle is operated. If there is any location providing alternative fuel within the vehicle's operating area, alternative fuel is available. If there are no locations providing alternative fuel, for *any* alternative fuel that meets the normal requirements and practices of the covered person's principal business, within the vehicle's operating area, then alternative fuel is ''not available.'' 60 F.R. 10980.

Many commenters argued that this explanation of the fuel availability exemption did not take into account other factors that must be considered in determining fuel availability. For example, commenters argued that alternative fuel should not be considered to be available if—

(1) it is not readily deliverable to motor vehicles because it is not of the proper composition for motor fuel, or there are no dispensers of the fuel;

(2) it is not available at convenient locations and times, or the fueling facility does not provide the same range of services; or

(3) fueling at an alternative fueling facility significantly increases the fueling time.

DOE believes these are factors that are properly considered in determining whether fuel is available that meets ''the normal requirements and practices'' of the principal business of the covered person or fleet. DOE will consider factors such as these when determining whether to grant or deny a request for an exemption because alternative fuel is not available.

DOE will, to the extent consistent with its statutory responsibilities, defer to reasonable fleet operators' judgments about the alternative fueled vehicles and alternative fuels that best meet their needs. DOE offers the following example to illustrate this:

A State government fleet operator reasonably determines that vans are the only available vehicles that meet its normal business requirements and practices. In searching for alternative fueled vans, the State fleet operator determines that only CNG-powered vans are available, but CNG is not available in the fleet's operating area. However, ethanol fueling facilities are available in the fleet's operating area. Because the State fleet operator has determined that no ethanol vans are available, it can apply for an exemption. DOE is likely to grant an exemption under paragraph (b)(1) for this situation.

Numerous commenters, including many electric utilities, stated that the proposed exemption requirements would force them to operate alternative fueled vehicles in rural areas that lack the refueling infrastructure or are otherwise unsuited to alternative fueled vehicle use because of terrain, climate, and other factors. Some commenters argued that an alternative fuel site located near the far edge of a vehicle's operating range is not a suitable refueling location for the fleet. Several commenters stated that the requirement of mapping operating areas and fueling sites is burdensome and impractical. One commenter argued that if an alternative fuel facility is not available that allows the fleet to maintain its centrally fueled characteristics, an exemption should be granted. Other commenters recommended that DOE revise the rule to specify a distance in miles, beyond which alternative fuel would be deemed ''unavailable.''

In response to these comments, DOE has revised § 490.308 to state, in paragraph (b)(1), that alternative fuel is not available if it cannot be obtained from fueling sites that permit central fueling of the covered person's fleet. Paragraph (c)(2) provides that a covered person that operates light duty vehicles outside of the MSAs/CMSAs listed in Appendix A of Subpart A is not required to map the vehicle operation zones and alternative fuel site locations if it can otherwise show that central fueling does not meet the normal requirements and practices of its principal business.

DOE notes that some of the comments which criticized the proposed exemption provision reflect a misunderstanding of § 490.306, which incorporates the Act's requirement that alternative fueled vehicles owned or controlled by covered persons must operate solely on alternative fuels. As explained in the discussion of § 490.306, that requirement does not apply when vehicles are operating in areas where the appropriate alternative fuel is not available.

b. *Discussion of alternative fueled vehicle availability.* To receive an exemption based on the criteria in subparagraph (b)(2), the covered person (or State fleet operator under § 490.204) must show that alternative fueled vehicles that meet the normal practices and requirements of its principal business are not available for commercial acquisition on reasonable terms and conditions for each MSA/CMSA that they operate a fleet in, within any of the States a MSA/CMSA comprises. For example, a covered person operating a fleet in the Louisville MSA (KY–IN) would have to show that no alternative fueled vehicle that meets the needs of its fleet are available in Kentucky or Indiana on reasonable terms and conditions.

Covered fuel providers having vehicles outside of MSAs/CMSAs, which are centrally fueled or capable of central fueling, must show that alternative fueled vehicles that meet the normal requirements and practices of their principal business are not commercially available on reasonable terms within the States those vehicles operate in.

Many commenters asked for clarification of the factors that DOE will take into account when determining whether vehicles are commercially available on reasonable terms and conditions. Some commenters pointed out that fleets procure vehicles in regular cycles, and in the case of States, sometimes multi-year cycles. In addition, the availability of alternative fueled vehicles produced by automobile manufacturers is limited, and delivery dates are sometimes uncertain. As a result, States and covered persons claim they may be unable to acquire alternative fueled vehicles during the model year in which they are required, even if they have acted in good faith and taken reasonable steps to meet their requirements. Many electric utilities submitted comments expressing concern about the consequences of being unable, despite a good faith effort, to obtain electric vehicles to satisfy their requirements. See discussion of § 490.307.

DOE will examine each request, and supporting documentation, to determine whether the State fleet or covered person has acted in good faith and taken reasonable steps to acquire vehicles for the model year in question. DOE will take into account the terms and conditions of any contracts or agreements a State fleet or covered person has entered into to obtain alternative fueled vehicles, as well as purchase orders placed by States and covered persons. For this determination, terms and conditions refer to stipulations, provisions, limitations, and prerequisites that are included in the contracts or agreements that enable the covered person to acquire motor vehicles.

If a fleet operator has ordered alternative fueled vehicles during a model year with a reasonable expectation that they would be delivered by the end of the model year, DOE will grant an exemption for that model year if the vehicles are not delivered in time to satisfy the requirement. Those vehicles would not then count as acquisitions in the model year in which they were delivered. On the other hand, DOE may not grant an exemption if it determines that a fleet or covered person has not made a good faith effort to acquire alternative fueled vehicles for a model year.

In the case of fuel providers, including utilities choosing the electric utility option under § 490.307, DOE will take into account steps the covered person has taken to help develop a market for alternative fueled vehicles that use the fuel that they provide.

Some commenters stated that requiring a State or covered person to inquire about alternative fueled vehicle availability from every dealer in a State is onerous. These commenters stated that the paperwork burden and the time involved in this process would be excessive. The Department does not wish to impose an undue paperwork burden on those States and fuel providers that are required to acquire alternative fueled vehicles under this program. To lessen the burden, DOE will only require a State or fuel provider to submit documentation from Original Equipment Manufacturers showing that

alternative fueled vehicles meeting its normal requirement and practices will not be available directly or through any dealer in a particular State. Returning to the above example of a covered person operating a fleet in the Louisville MSA, the covered person needs to provide documentation that shows that Original Equipment Manufacturers will not provide alternative fueled vehicles that meet its normal requirements and practices either directly or through a dealer in Kentucky or Indiana. Thus, the final rule only requires a covered person to submit documentation from a limited number of sources showing vehicle unavailability, as opposed to documentation from every dealer in a State. The Department believes that this will greatly simplify the process for States and covered persons in determining the availability of alternative fueled vehicles that meet their normal requirements and practices.

DOE has added paragraph (e) to clarify that an exemption may be granted in whole or in part. One situation in which a partial waiver (*e.g.*, exempting a fleet from model year requirements, but requiring some or all of the vehicles to be acquired in the next model year) may be appropriate is when a fleet or covered person cannot acquire vehicles in time to satisfy a model year's requirements.

Some commenters sought clarification or offered recommendations concerning the meaning of ''normal requirements and practices'' when used in determining whether alternative fueled vehicles are available. Several commenters argued that the range, safety, performance characteristics, maintainability, cost, cargo capacity and passenger capacity should be factors included in making that determination. One commenter stated, for example, that a utility which normally purchases subcompact cars for reading meters should not be required to purchase luxury class vehicles if subcompacts are not available. DOE agrees that all of these factors may be considered in determining whether alternative fueled vehicles are available that meet the normal requirements and practices of a State fleet's or covered person's business.

If a covered person normally acquires vehicles from one automobile dealer or from one automobile manufacturer, but is unable to acquire alternative fueled vehicles of the model type needed from these same sources, this is not sufficient to qualify for an exemption under subparagraph (b)(2), if appropriate alternative fueled vehicles are available from other dealers or manufacturers. Having to use another dealer or manufacturer will not be considered to be outside the normal requirements and practices of the covered person. The same procedures that are currently being employed by the covered person to obtain these vehicles can be used to obtain them from different sources.

Paragraph (b) sets forth the types of documentation in support of exemption requests that should be provided to DOE.

Section 490.309 Annual Reporting Requirements

Section 490.309 sets forth annual reporting requirements. An annual report to verify regulation compliance is required of all covered alternative fuel providers. Paragraph (a) sets forth where and by when annual reports should be sent.

Paragraph (b) describes the information that must be included in this annual report. One commenter suggested that DOE should require States and fuel providers to report whether a vehicle is dedicated or dual-fueled and the type of fuel the vehicle is capable of operating on. The Department has determined that this information is necessary for administering title V of the Act, including monitoring compliance with the vehicle acquisition requirements. Thus, section 490.309(b)(5) (iv) and (v) have been added.

Subparagraph (b)(2) requires covered persons to report the number of new light duty alternative fueled vehicles that they are required to acquire by section 490.302 or 490.307. To determine this number, a covered person would multiply the number entered for subparagraph (b)(1), by the acquisition percentage from section 490.302 or 490.307, whichever applies for that model year. For example, if the number of new light duty motor vehicles acquired by a covered person in MY 1998 is 50, the number of new light duty vehicles that are required to be acquired is 50 percent of 50, or 25 ($50 \times .5 = 25$). The number of new light duty alternative fueled vehicles acquired, added to the number of alternative fueled vehicle credits applied, from subparagraph (b)(4), should be equal to or greater than the number calculated for subparagraph (b)(2).

Paragraph (c) sets forth the procedure that a covered person must follow if it is applying alternative fueled vehicle credits against its acquisition requirements.

Consistent with the requirements of 5 CFR Part 1320.6(f), paragraph (d) would require that records related to this reporting requirement be maintained and retained for a period of three years.

E. Subpart E—Reserved

F. Subpart F—Alternative Fueled Vehicle Credit Program

Background

Section 508 of the Act requires DOE to establish an alternative fueled vehicle credit program that will allocate alternative fueled vehicle credits to a fleet or covered person that is required to acquire alternative fueled vehicles under title V of the Act. Credits are to be given to a fleet or covered person that acquires alternative fueled vehicles in excess of the number that fleet or covered person is required to acquire, or that acquires alternative fueled vehicles prior to the date that fleet or covered person is required to acquire alternative fueled vehicles. An alternative fueled vehicle credit may be used to comply with alternative fuel provider or fleet program requirements in a later year, or it may be traded to another fleet or covered person who is required to acquire alternative fueled vehicles by Part 490.

The purpose of establishing a credit program is to provide purchasing flexibility for the regulated fleet operators without sacrificing the program's energy security goals. The general concept is that some fleet operators may, at times, find it attractive to buy more alternative fueled vehicles than required, if in doing so they can get credit against future acquisition requirements, or can sell or transfer the credits to another party. If the credit program is properly implemented and managed, there will be no decrease in energy security compared to a program based strictly on compliance through acquisitions.

Subject to a restriction on fuel use that must accompany a credit transferred to a covered fuel provider, alternative fueled vehicle credits can be traded freely among any of the organizations in the United States that are required to acquire alternative fueled vehicles. Because a major goal of the Act is the reduction of our Nation's dependency on foreign oil, it makes little difference where in the United States this reduction takes place. This distinguishes the DOE credit program from credit trading under EPA's Clean Fuel Vehicle program, which limits trading to transfers within the ''non-attainment'' areas.

The one restriction on trading is based upon the last sentence of section 508(d) of the Act, which provides that vehicles generating credits which are transferred to alternative fuel providers must

operate solely on alternative fuel, except when operating in an area where the appropriate alternative fuel is unavailable. 42 U.S.C. 13258(d). This requirement is explained in the discussion of § 490.506 in this Supplementary Information.

Section 490.502 Creditable Actions

Section 490.502 describes the actions for which DOE will allocate alternative fueled vehicle credits pursuant to section 508 of the Act. Section 508(a) of the Act authorizes the allocation of credits to fleets or covered persons that acquire alternative fueled vehicles in excess of the number they are required to acquire, or that acquire alternative fueled vehicles in advance of the date they are required to be acquired. However, after the Act's alternative fueled vehicle acquisition requirements become effective under this part, the only way a fleet or covered person can generate credits is by acquiring alternative fueled vehicles exceeding the number of vehicles required to be acquired, calculated as applicable under § 490.201 or § 490.302. Credits can no longer be allocated for early acquisitions. For example, an alternative fueled vehicle acquired in excess of the number required in model year 1997 cannot be claimed to be an early acquired alternative fueled vehicle for model year 1999. The excess alternative fueled vehicle will generate 1 alternative fueled vehicle credit only, not 2 credits because it was acquired 2 years in advance.

Under this provision, the acquisition of alternative fueled vehicles excluded from acquisition determinations by § 490.3, such as motor vehicles held for lease or rental to the general public, emergency vehicles and law enforcement vehicles, will generate credits that can be used to satisfy the State fleet and alternative fuel provider acquisition requirements. Similarly, acquisition of alternative fueled vehicles exceeding 8,500 pounds gross vehicle weight (*i.e.,* medium and heavy duty vehicles) also will generate credits. Section 508(b) of the Act provides the statutory basis for this policy because it refers to the allocation of credits for the excess or early acquisition of *alternative fueled vehicles* in excess of the number of vehicles a fleet or covered person is required to acquire. Credits are not limited to alternative fueled vehicles that qualify as acquisitions under the vehicle acquisition mandates for States and fuel providers.

The allowance of credits for the acquisition of medium and heavy duty alternative fueled vehicles reflects a change from the notice of proposed rulemaking. In the notice of proposed rulemaking, DOE discussed whether to allow the acquisition of medium duty and heavy duty alternative fueled vehicles to generate credits. DOE stated that many medium duty and heavy duty vehicles are predominantly urban use vehicles, such as transit buses and delivery trucks, and could take advantage of the anticipated fueling infrastructure within these urban areas. DOE also stated that these vehicles possess larger capacity engines, which consume significantly more fuel than light duty vehicles and result in increased displacement of petroleum-based fuel and greater energy security. However, while recognizing these potential benefits from giving credit for such acquisitions, DOE stated that the Act prevented allocating credits for the acquisition of medium and heavy duty vehicles because section 508(b) provides that a credit shall be allocated for the same ''type'' vehicle as the excess vehicle or earlier acquired vehicle. The term ''type'' is not defined in the Act, and nothing in the legislative history of the Act explains it. In the notice, DOE proposed the interpretation that because the only type of vehicles that are required to be acquired by title V are light duty vehicles, credits could not be given for the acquisition of medium and heavy duty alternative fueled vehicles. *See* 60 F.R. at 10982.

a. *Comments critical of the Department's proposed interpretation.* The Department's proposed interpretation of section 508(b) of the Act, as applied to allocating credits for the acquisition of medium and heavy duty vehicles, was the subject of much criticism in public comments. Commenters argued that the proposed interpretation was not required by the text of the Act, and that other interpretations would better further the goals of the Act.

Several commenters pointed out that ''alternative fueled vehicle,'' as defined in section 301(3) of the Act, is not limited to motor vehicles weighing 8,500 or fewer pounds gross vehicle weight. Commenters also stated that the term ''class,'' not ''type,'' is commonly used to distinguish vehicles by weight. Therefore, if Congress had intended to restrict credits to acquisition of light duty vehicles, it would not have used the term ''type'' to impose such a restriction. In support of this argument, commenters noted that the term ''type'' is used in section 302(a) of the Act to distinguish dedicated and dual fueled vehicles. Some commenters argued that the statutory language would have been a peculiarly indirect way for Congress to limit allocation of credits to acquisition of light duty vehicles. Congress could have provided that credits shall only be allocated for the acquisition of light duty alternative fueled vehicles. Or, as one commenter pointed out, Congress could simply have stated that DOE shall only allocate credits for early or excess *acquisitions.* Instead, section 508(b) states that ''credits shall be allocated for the same type vehicle as the excess vehicle or earlier acquired vehicle.''

Commenters also argued that although Congress decided not to *require* the acquisition of medium and heavy duty vehicles as part of the mandates, the concerns that influenced that decision are not present when a State or covered person *voluntarily* acquires an alternative fueled medium or heavy duty vehicle. Engine manufacturers stated that medium and heavy duty vehicles were exempted from the Act's alternative fueled vehicle acquisition requirements because most heavy duty engines are not capable of operating on flexible fueling, and the alternative fueling infrastructure is not developed widely enough to meet the needs of such dedicated fuel vehicles. Another commenter suggested that the study of heavy duty vehicles acquired by Federal government fleets, mandated by section 302(a)(4) of the Act, indicates that Congress favored including heavy duty vehicles but thought that more information was needed before requiring States and covered persons to acquire heavy duty vehicles. Thus, in their view, there is no inconsistency in limiting the acquisition mandates to light duty vehicles and allocating credits for the voluntary acquisition of medium and heavy duty vehicles.

Commenters also argued that interpreting the term ''type'' to foreclose allocation of credits to acquisition of medium and heavy duty vehicles would be contrary to the Act's petroleum displacement and air quality goals. Commenters supplied additional information and reasons to show that allocating credits for the acquisition of medium and heavy duty vehicles will promote the goals of the Act. These commenters stated that allowing credit for the acquisition of medium and heavy duty alternative fueled vehicles will increase the availability of alternative fueled vehicles, allow fleets increased flexibility in acquiring vehicles, and advance the state of alternative fueled vehicle technology. The California Energy Commission commented that its extensive experience in alternative fuel infrastructure development shows that it is critical to have a high volume of alternative fuel available immediately to achieve the economies of scale needed for alternative fuels to compete with

conventional fuels. Another commenter stated that high alternative fuel usage is needed to permit fleets to offset the higher initial cost of alternative fueled vehicles. It was argued that allowing credits for the acquisition of medium and heavy duty vehicles, which use much more fuel than light duty vehicles, will promote development of the fueling infrastructure that is essential for covered persons and fleets. Other commenters stated that the use of alternative fuels in medium and heavy duty vehicles will contribute to the air quality goals in section 502 of the Act because heavy duty vehicles emit high levels of pollution when operating on petroleum-based fuels.

b. *Response to comments and explanation of the final rule.* DOE agrees with the commenters who argued that interpreting the word ''type'' to restrict allocation of credits to acquisition of light duty vehicles produces a result that does less to further the Acts's petroleum displacement and other goals than would allowing credits for the acquisition of medium and heavy duty vehicles. DOE also is persuaded that allocating credits for medium and heavy duty vehicle acquisitions would not be inconsistent with Congress' decision to exclude medium and heavy duty vehicles from the alternative fueled vehicle acquisition mandates.

However, DOE is obligated to give effect to the statutory text, and section 508(b) states that a ''credit shall be allocated for the same type vehicle as the excess or earlier acquired vehicle.'' Although commenters suggested various alternative interpretations of this statutory language, DOE has concluded that none of the commenters' proposed interpretations is satisfactory. Some commenters suggested that ''type'' could refer to the Act's requirement that covered alternative fuel providers must operate vehicles solely on alternative fuel, except when operating in areas where such fuel is not available. They suggested that DOE could interpret the type of vehicle restriction to require that a vehicle which generated a credit must be operated solely on alternative fuel after the credit's transfer. This interpretation is unsatisfactory because section 508(d) already expressly attaches the alternative fuel operation requirement to credits generated by fuel provider acquisitions. Other commenters suggested that ''type'' could refer to the type of alternative fuel used by the vehicle. However, this distinction makes no sense in the context of the State and alternative fuel provider mandates because sections 501 and 507(o) are ''fuel neutral,'' *i.e.,* they contain no distinctions based on type of alternative fuels. Some commenters argued that the type of vehicle restriction could be interpreted to permit allocating more credits for alternative fueled vehicles that consume a large amount of alternative fuel. However, section 508(b) expressly provides that one credit shall be allocated for the acquisition of alternative fueled vehicles; thus, multiple credits for vehicles that consume a large amount of alternative fuel is not permitted.

The statutory text allows one plausible interpretation of the type of vehicle restriction, which could be applied to address a situation that might arise under title V of the Act. Unlike sections 501 and 507(o) of the Act, which set forth light duty vehicle acquisition requirements for States and covered fuel providers, section 507(k)(2) of the Act authorizes DOE, by rule, to require inclusion of new urban buses in a private or municipal fleet vehicle acquisition program established under section established under section 507 (a) or (g). The type of vehicle restriction in section 508 could apply to prevent a covered private or municipal fleet operator from satisfying a requirement to acquire an urban bus with a credit that was generated by the acquisition of a light duty vehicle. The allocation of a credit for the acquisition of a light duty vehicle in that situation would undermine the petroleum displacement and air quality goals of the Act. If DOE proposes a private and municipal fleet program in the future, DOE may propose amendments to subpart F in order to reflect the ''type'' of vehicle restriction. Experience under the Alternative Fuel Transportation Program may reveal other possible applications of the type of vehicle restriction in section 508(b). In that event, DOE will give effect to this language through case-by-case application of the statutory provision or by proposing an amendment of these regulations.

In summary, it is not clear what Congress intended by including the type of vehicle restriction in section 508. However, after reconsidering this issue, DOE has concluded that whatever that statutory language means, it cannot be interpreted to mean that credits may not be allocated for the acquisition of medium and heavy duty vehicles under this part. Therefore, § 490.502 has been revised to treat the acquisition of new medium and heavy duty vehicles the same as vehicles excluded under the section 490.3. Both involve the acquisition of an alternative fueled vehicle in addition to the number of alternative fueled vehicles that a fleet is required to acquire. Thus, both should generate credit.

The Department received comments requesting that credits be allocated for conversions of fleet vehicles to alternative fueled vehicles before the effective date of the acquisition requirements. These commenters argued that they had been converting vehicles since 1992, believing that they would receive credits for these conversions pursuant to section 508 of the Act.

DOE can accommodate these comments to a limited extent because its discretion to allocate credits for conversions that occur prior to the effective date of the acquisition requirements is limited by the terms of the Act. Section 508(a) provides, in relevant part, that DOE shall allocate a credit to a fleet or covered person that ''acquires an alternative fueled vehicle * * * before the date that fleet or covered person is required to acquire an alternative fueled vehicle under [title V].'' 42 U.S.C. 13258(a). It is clear from this statutory text that an alternative fueled vehicle must be *acquired* by a fleet or covered person subject to the Act's acquisition requirements in order for a credit to be allocated for that vehicle. The conversion of a vehicle already in service in a fleet on October 24, 1992, the effective date of the Act, would not satisfy this acquisition requirement. In addition, there is no statutory provision authorizing DOE to allocate credits for the acquisition of alternative fueled vehicles prior to the effective date of the Act.

Thus, DOE will allocate credits to a State fleet or covered person subject to the acquisition requirements only if it purchased or leased a motor vehicle on or after October 24, 1992, and converted it to an alternative fueled vehicle before the effective date of the applicable acquisition requirements. For purposes of calculating credits for early acquisition of these vehicles, DOE will consider the date of the conversion to be the acquisition date. Paragraph (c) of § 490.502 has been added to make clear that the four-month time limit on conversions, established by § 490.202(a)(3) and § 490.305(a)(3) of this rule, shall not be applied retroactively to any conversion that occurred before the date this rule takes effect.

Some commenters recommended that DOE should award credits based on the amount of petroleum displaced, rather than for the early or excess acquisition of an alternative fueled vehicle. These commenters argued that awarding credits based on the amount of petroleum displaced will encourage the use of more alternative fuel than the

current proposal. Again, section 508 of the Act does not allow DOE to adopt this recommendation. Section 508 states that credits shall be awarded for the *acquisition* of alternative fueled vehicles by fleets and covered persons that are required to acquire alternative fueled vehicles. By implication, therefore, DOE may not award credits based on the amount of petroleum displaced.

Several commenters requested that DOE award credits to fleets not currently subject to acquisition mandates, such as fuel provider, private, municipal and State agency fleets that, although not required to obtain vehicles, voluntarily have chosen to acquire alternative fueled vehicles. These commenters argue that awarding credits to these fleets would increase acquisitions of alternative fueled vehicles, which will boost petroleum displacement and aid in the development of a market for alternative fuels and alternative fueled vehicles. The Department agrees that the voluntary acquisition of alternative fueled vehicles by these fleets would result in increased petroleum displacement and bolster the alternative fuels market. However, section 508(a) states unambiguously that ''the Secretary shall allocate a credit to a fleet or covered person that is *required* to acquire an alternative fueled vehicle * * *'' 42 U.S.C. 13258(a) (emphasis added). Thus, a fleet or covered person must be required by the Act to acquire alternative fueled vehicles before credits can be allocated to them. Non-mandated fleets are not eligible to earn credits.

Section 490.503 Credit Allocation

Section 490.503 deals with alternative fueled vehicle credit allocation. Paragraphs (a) and (b) are consistent with the language of section 508(a) of the Act, which describes how credits are to be allocated. Before alternative fueled vehicle credits are allocated a covered person or fleet must apply for them using the procedure described in § 490.507.

Paragraph (a) provides for the allocation of one credit for each alternative fueled vehicle a fleet or covered person acquires that exceeds the number of light duty alternative fueled vehicles that fleet or person is required to acquire. Thus, if a fleet or covered person is required to acquire 10 light duty alternative fueled vehicles in a model year and it acquires 15 alternative fueled vehicles, it can apply for allocation of five alternative fueled vehicle credits.

Paragraph (b) provides for the allocation of one credit for each year an alternative fueled vehicle is acquired in advance of the date the fleet or covered person is required to acquire alternative fueled vehicles. For State fleets and covered persons, excluding States that elect to submit an alternative plan under § 490.203 and those covered persons that choose the electric utility option provided by § 490.307, the requirements shall take effect on September 1, 1996, the beginning of MY 1997. States that comply through alternative plans approved by DOE may be exempt from MY 1997 requirements, in which case the acquisition requirements will take effect for them on September 1, 1997, the beginning of MY 1998. For those covered persons that have taken the electric utility option provided by § 490.307, the effective date is January 1, 1998. Credits will be awarded for the acquisition of light, medium, and heavy duty alternative fueled vehicles, and for alternative fueled vehicles excluded by § 490.3, prior to these dates.

Private and municipal fleets are not required by this rule to acquire alternative fueled vehicles. If DOE later establishes a private and municipal fleet program through rulemaking under section 507 (b) or (g) of the Act, all alternative fueled motor vehicles newly acquired between October 24, 1992 and the start date of the private and local fleet mandate would be eligible for credit allocation at the rate of one credit for each year an alternative fueled vehicle is acquired in advance of the effective dates of those mandates.

Several commenters suggested that dedicated vehicles should receive double the credits of dual-fuel or flexible-fuel vehicles. DOE does not have the statutory authority to allocate credits in this manner. Section 508(b) of the Act provides for the allocation of credits for ''alternative fueled vehicles'' acquired by fleets and covered persons subject to the Act's requirements, and it does not differentiate between dedicated and dual-fuel vehicles. This is consistent with the definition of ''alternative fueled vehicle'' in section 301(3), which includes both dedicated and dual-fuel vehicles.

Credit allocation is best explained by the following examples.

Example 1. A covered person acquires 10 alternative fueled vehicles in MY 1994 and 15 alternative fueled vehicles in MY 1995. The covered person acquires no alternative fueled vehicles in MY 1996. Because the covered person is not required to acquire alternative fueled vehicles until MY 1997, each alternative fueled vehicle acquired in MY 1994 will generate 3 credits and each alternative fueled vehicle acquired in MY 1995 will generate 2 credits. Thus, the covered person generates 60 credits [(10×3)+(15×2)=60], which can be used against that person's future alternative fueled vehicle acquisition requirements or can be traded to other covered persons or fleets.

Example 2. An electric utility that has chosen the option provided by § 490.507 acquires 10 electric vehicles in each of calendar years 1993 through 1997. Since the electric utility is not required to acquire alternative fueled vehicles until January 1, 1998, credits are generated on a calendar year basis for the early acquisition of alternative fueled vehicles. Thus each electric vehicle acquired in calendar year 1993 will earn 5 credits because it was acquired 5 years early. Similar logic ensues for acquisitions in subsequent years. Thus, the electric utility generates 150 credits [(10×5)+(10×4)+(10×3)+(10×2)+(10×1)=150] for the acquisition of 50 electric vehicles from 1993 to 1997. These credits can be used against the utility's future alternative fueled vehicle acquisition requirements or can be traded.

Example 3. A State fleet acquires 20 alternative fueled vehicles in model years 1995 and 1996. Thus, the State has earned 60 credits prior to the start of the program [(20×2)+(20×1)]=60. The State fleet also plans to acquire 20 alternative fueled vehicles in model years 1997 and 1998. The State fleet regularly acquires 100 new light duty vehicles each year. For model years 1997 and 1998 the State fleet's acquisition requirements are 10 and 15 alternative fueled vehicles, respectively. If the State actually acquires 20 alternative fueled vehicles in model years 1997 and 1998, it will have acquired 10 vehicles in excess of its requirement for model year 1997 and 5 vehicles in excess of its requirement for model year 1998. These excess acquisitions would earn the State fleet 10 and 5 credits, respectively. Thus, the State fleet has earned credits for both early and excess acquisitions of alternative fueled vehicles. The total number of credits the State fleet will have earned for model years 1995 through 1998 is 75 (60+10+5)=75. These credits can be used against the State fleet's future alternative fueled vehicle acquisition requirements or can be traded.

DOE will establish a computer database that will serve as a record of credit allocations, trades and credit balances.

Section 490.504 Use of Alternative Fueled Vehicle Credit

No comments specifically critical of this section were received. However, the Office of Management and Budget requested that § 490.504 be revised to clarify that one credit represents the acquisition of one alternative fueled vehicle in a model year for which a fleet or covered person is required to acquire alternative fueled vehicles. Each alternative fueled vehicle credit will represent one alternative fueled vehicle and can be applied against the alternative fueled vehicle acquisition requirements for one model year only, as designated by the fleet or covered person. Section 490.504 has been revised accordingly.

Section 490.505 Credit Accounts

Section 490.505 deals with Alternative Fueled Vehicle Credit accounts. Paragraph (a) states that DOE will establish a credit account for each fleet or covered person who obtains an alternative fueled vehicle credit. Paragraph (b) states that each fleet or covered person will receive an annual credit account balance statement after the receipt and recording of its annual activity report.

In the proposed rule, DOE indicated that it was considering providing updated credit account balance statements to fleets and covered persons upon request during the year. These updated credit account balance statements would constitute proof of a fleet or covered person's credit account balance as of the date they were printed. These statements may be required of a credit seller by a credit purchaser before proceeding with the credit transfer. DOE asked for comment on whether credit account balance statements should be provided for a charge. Several comments were received on this issue, all opposing a fee for these statements. DOE has decided to provide these statements at no cost to the requestor, but it may in the future decide to limit the number of reports that will be provided free of charge. DOE will provide notice, by publication in the Federal Register, and directly to affected State fleets and covered persons, if it later finds that it is necessary to limit the number of statements that it will provide free of charge.

Section 490.506 Alternative Fuel Vehicle Credit Transfers

No comments specifically critical of this section were received. Section 490.506 deals with the transfer of alternative fueled vehicle credits. Paragraph (a) states that any fleet or covered person may transfer an alternative fueled vehicle credit to any fleet required to acquire alternative fueled vehicles, or to a covered person if the transferor certifies to the covered person that the vehicle which generated the credit will operate solely on alternative fuel, except when the vehicle is operated in an area where the appropriate alternative fuel is unavailable. This restriction on the transfer of credits to a covered person is required by section 508(d) of the Act. 42 U.S.C. 13258(d).

Paragraph (b) states that proof of credit transfer should be provided to DOE within thirty days of the transfer date, and provides for the use of a DOE form, or other written documentation containing the dated signatures of the transferor and transferee. This is a change from a proposed requirement to report credit transfers within seven days. Seven days was criticized as being insufficient time by commenters.

Section 490.507 Credit Activity Reporting Requirements

Section 490.507 describes the credit program's activity reporting requirements. An annual report is required of all fleets or covered persons who have generated or traded alternative fueled vehicle credits to record and track their credit activity. One commenter urged DOE to drop the reporting requirement, and only require the retention of credit activity records. DOE has not adopted this recommendation because the credit reports are essential for monitoring compliance with the vehicle acquisition requirements. Reporting will also aid the development of an alternative fueled vehicle credit market.

Paragraph (a) sets forth where and by when annual reports should be sent. Paragraph (b) describes the required information that would be included in this annual report. Subparagraph (b)(1) allows a fleet or covered person to report either the number of alternative fueled vehicles acquired in excess of acquisition requirements for the model year or the number of alternative fueled vehicles acquired in advance of the start date of the acquisition requirements. Except for covered persons that choose that electric utility option or States that elect to submit an alternative compliance plan, States and covered persons subject to section 501 of the Act can no longer earn credits for early acquisition of alternative fueled vehicles after September 1, 1996, the beginning of model year 1997.

G. Subpart G—Investigations and Enforcement

This subpart elicited few public comments. The only specific recommendation received was a request that DOE add a provision that would give States 90 days advance notice of its intent to bring an action to enforce compliance with the Act's alternative fueled vehicle acquisition requirements. DOE agrees that such advance notice would generally be desirable for both States and covered persons. However, there may be some situations where it would not be appropriate, such as the repeated, willful refusal to comply with the acquisition requirements. Thus, DOE has added a sentence to § 490.605, Statement of Enforcement Policy, which states that DOE normally will not commence an enforcement action against a person subject to the acquisition requirements without giving that person notice of its intent 90 days before the beginning of an enforcement proceeding.

IV. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effect on States, on the relationship between the National Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are substantial effects, then the Executive Order requires a preparation of a Federalism assessment to be used in all decisions involved in promulgating and implementing policy action.

This rule implements the alternative fueled vehicle acquisition requirements in section 507(o) of the Act, which apply to State government fleets. It also establishes an Alternative Fueled Vehicle Credit Program under which States may generate credits if they obtain alternative fueled vehicles in excess of their required quantity or if they obtain alternative fueled vehicles prior to the date when they are required to acquire alternative fueled vehicles. The allocation of credits is based on the measurable actions of obtaining alternative fueled vehicles and is available to fleets, that meet the requirements, throughout the United States.

The granting of credits to States will be handled in the same manner as the granting of credits to any other covered fleet operator. The enforcement of the State fleet mandate will be handled in the same manner as other mandate programs. States can also apply for a hardship exemption which would exempt them from acquiring alternative fueled vehicles in any given year.

The Department has determined that since States are treated the same as any other fleet operator in the allocation of credits and in the administration and enforcement of the fleet mandate, the final rule will not have a substantial direct effect on the institutional interests or traditional functions of States. In addition, the provision for hardship exemptions included in the State fleet mandate precludes any impermissible expansion of the authority that the Federal government has over States.

Section X of this Supplementary Information addresses the potential costs to States of this final rule.

V. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation by providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation describes any administrative proceeding to be available prior to judicial review and any provisions for the exhaustion of administrative remedies. DOE certifies that this rule meets the requirements of sections 2(a) and (b)(2) of Executive Order 12778.

VI. Review Under Executive Order 12866

Today's regulatory action was subject to review under Executive Order 12866, Regulatory Planning and Review (October 4, 1993) by the Office of Information and Regulatory Affairs (OIRA). Although DOE concluded that the final rule would not result in (1) an annual effect on the economy of $100 million or more or (2) have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete in domestic export markets, OIRA nevertheless determined this rulemaking to be a significant regulatory action under the Executive Order and requested that DOE prepare a cost analysis. A copy of that cost analysis is in the administrative record on file in DOE's Freedom of Information Reading Room.

The cost analysis that was performed for the proposed rule spans, the 25-year time frame from 1995 to 2020 , and it includes the incremental vehicle purchase cost and the cost differential between alternative fuels and gasoline under five different scenarios. The analysis examines the effects the rule will have on the acquisition of alternative fueled vehicles by fuel providers and State fleets, exclusive of the effects of non-mandated acquisition of vehicles by these and other fleets. In doing so it assumes that no alternative fueled vehicles will be acquired by these fleets prior to model year 1996. In actuality, these fleets currently are acquiring alternative fueled vehicles—either because of economics, State laws or business strategies—and will probably continue to do so in the future. Assumptions about the number of vehicles acquired, the operating characteristics of those vehicles, fleet vehicle replacement rates, current and future alternative fueled vehicle incremental costs, and current and future retail fuel costs were based on previous analyses undertaken by the Department. The analysis did not include estimates of the effects of any Federal and State tax incentives for the acquisition of alternative fueled vehicles.

The cost analysis of the proposed rule shows that the costs to fuel providers and State fleets in complying with the rule varies depending upon vehicle type, fuel type and fuel consumption, but in no case would the estimated annual costs exceed $61 million per year. More typically, under the various scenarios, the estimated annual costs are approximately $25 million, decreasing to $10 million per year in later years.

The Department sought comments on all aspects of its analysis. In particular, the Department requested comment on the following elements of the analysis: the retail and net-of-excise-tax future price projections for gasoline and alternative fuels; the assumption that alternative fueled vehicle purchases, that would result in apparent life-cycle cost savings, would not occur in the absence of this rule; and the assumption that the cost per gallon of gasoline displaced falls as the amount of gasoline displaced increases and data that would aid in estimating the extra refueling costs for covered persons whose fleets use fuels other than the one they themselves provide.

Several comments were received on the Department's cost analysis. The comments were centered on the estimated fuel and vehicle costs that were included in the analysis. Commenters claimed that the estimated prices for gasoline were high while the estimated prices for alternative fuel were low. These commenters also stated that the incremental alternative fueled vehicle prices included in the cost analysis were low. Another commenter stated that the projected cost of gasoline was understated in DOE's cost analysis because it did not include energy security and environmental costs. A few commenters stated that DOE did not consider the additional costs of operating alternative fueled vehicles, such as the time and labor required for travel to refueling sites and the extra cost of more frequent refueling.

One commenter submitted an especially detailed critique of the Department's cost analysis. This commenter's main criticism was that DOE did not conduct a sensitivity analysis using a range of plausible fuel and vehicle cost assumptions. This commenter performed a sensitivity analysis of DOE's ''gaseous fuel vehicle dominant scenario'' by analyzing additional cases that used increased fuel and vehicle cost assumptions. This analysis utilized EIA fuel cost data for some of these cases. Based on the sensitivity analysis, this commenter argued that the net present value of the overall costs of the proposed rule is likely to exceed $100 million annually, for a few years, using moderate price assumptions. Thus, the commenter concluded that DOE is required to perform a full-scale economic impact analysis under Executive Order 12866.

DOE found this comment to be generally helpful for evaluating the costs of the proposed rule, although it disagrees that compliance with the rule will impose costs on States and fuel providers that exceed $100 million annually. First, the comment that the rule requires a full assessment of costs and benefits was based on calculations of cost using undiscounted values. Applying a discount rate is a standard aspect of commonly accepted cost impact analyses. Had this commenter used any reasonable discount rate, its cost analysis would have shown the costs to be less than $100 million dollars in any one year. Second, this commenter also calculated the costs for one of the most costly scenarios included in the DOE cost analysis, the gaseous fueled vehicle dominant scenario. This scenario assumes that natural gas vehicles will represent 75 percent of the new alternative fueled vehicles, LPG (propane) will represent 15 percent, and methanol flexible fuel vehicles will represent 10 percent of vehicles required to be acquired annually under the rule. Scenarios included in DOE's analysis that project dominant use of flexible fueled vehicles, which are believed more likely for State government fleets, result in much lower costs.

While plausible estimates of the future costs of fuel and alternative fueled vehicles may differ, the greatest uncertainty about the future costs of the rule stems from the difficulty of predicting the choices of vehicles and fuels that will be made by covered States and fuel providers. In reconsidering the cost analysis in light of the comments, DOE has conducted (and placed in the record of the rulemaking) a supplemental cost analysis that estimates the costs that would result if fleets chose to meet their requirements by acquiring vehicles that operate exclusively one fuel. Although

some fleets are not expected to acquire vehicles that operate exclusively on one fuel, the analysis is useful for estimating the range of possible costs. Analyses were performed for acquisitions comprised exclusively of methanol, ethanol, natural gas or propane vehicles. The supplemental cost analysis uses EIA fuel cost estimates and current wholesale fuel prices, together with the most current information in DOE's possession on fleet size, incremental vehicle cost, vehicle turnover and fuel consumption. In conducting the supplemental analysis, DOE did not consider the additional costs of operating alternative fueled vehicles (e.g., the time and labor required for travel to refueling sites and the extra cost of more frequent refueling). DOE acknowledges that there may be additional operational costs associated with the operation of some types of alternative fueled vehicles. However, it is not feasible, at a reasonable cost, to quantify such costs because of the uniqueness of each fleet's operational characteristics (e.g., geographic location, fuel cost, labor rate, etc.)

The results of DOE's supplemental analysis show that over the first 5 years of the program, the costs to State and fuel provider fleets together could range from a low of $5 million per year if alcohol fueled AFVs are acquired, up to a maximum total cost of $75 million per year if AFVs using gaseous fuels are acquired (occurring during the fifth year of the program when acquisition requirements reach their highest level). After the first five years of the program, DOE expects that economies of scale will result in steadily decreasing alternative fueled vehicle incremental costs.

VII. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, was enacted by Congress to ensure that small entities do not face significant negative economic impact as a result of Government regulations. In instances where significant impacts are possible on a substantial number of entities, agencies are required to perform a regulatory flexibility analysis.

DOE has determined that this rule will not have a significant negative impact on a substantial number of small entities. To be covered by this rulemaking, an organization must own, operate or control at least 50 light duty motor vehicles, of which at least 20 light duty motor vehicles used primarily within a single MSA or CMSA must be capable of being centrally fueled. An organization that fits this description is usually not a small organization.

VIII. Review Under the Paperwork Reduction Act

New information collection requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and recordkeeping requirements are included by this rulemaking. Accordingly, this notice has been submitted to the Office of Management and Budget for review and approval of paperwork requirements. The information DOE will collect through the reporting requirements in the rule is necessary to determine whether an organization is in compliance with the regulation and whether they are eligible for the allocation of alternative fueled vehicle credits. The frequency of the information collection is annually and is due four months after the end of the compliance period (the model year). It is estimated the number of organizations submitting reports will be approximately 1000 for the years 1997 through 1999. The estimated number of organizations who will be submitting reports after that date has not been determined.

The public reporting burden is estimated to average 12 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and retrieving the collection of information. The collection of information contained in this rule is considered the least burdensome for the Department of Energy functions to comply with the legal requirements and achieve program objectives.

IX. Review Under the National Environmental Policy Act

This rule establishes procedures for the implementation of an Alternative Fuel Transportation Program, which are required to assist in and monitor the progress of State fleet and certain alternative fuel providers compliance activity. The rule provides for reporting procedures to demonstrate compliance with the alternative fueled vehicle acquisition mandates as specified by title V of the Energy Policy Act of 1992, and it includes procedures for interpretive rulings, exemption, appeals, and the approval process for State plans.

The rule also establishes and defines the parameters for who must comply, the parts of a vehicle inventory which are affected by the acquisition mandates, the allocation of credits for voluntary acquisitions, the investigation and enforcement in the assessment of civil penalties, and the contents of a State's light duty alternative fueled vehicle plan. Because of the foregoing non-procedural parts of the rule, the Department has prepared an Environmental Assessment (EA).

The EA assesses the environmental effects of the alternative fueled vehicle acquisitions required by this rule and compares these effects to that of a no action alternative, whereby fleets would continue to purchase conventionally fueled vehicles. The EA finds that the alternative fueled vehicle acquisitions required by the rule would decrease State and alternative fuel provider fleet emissions of non-methane organic gases, carbon monoxide, nitrogen oxides, particulate matter and carbon dioxide for all scenarios examined. The reduction of these pollutants on a vehicle-by-vehicle comparison is sizeable. However, because the number of alternative fueled vehicles compared to the country's total population is small, the magnitude of these beneficial environmental effects are small. A less than 3% decrease in cumulative emissions from all highway vehicles in the U.S. is estimated at the end of the 25-year study period in 2020. However, the vehicles acquired due to this program and the associated emissions improvements would be concentrated in metropolitan areas.

For each of the pollutant-scenario combinations, the results show a reduction in the emission levels. When the emissions from year 2020 are compared with 1993 National Mobile Source Emissions, the reductions range from 0.001% for NO_X in the Gaseous Fuel Dominant Scenario to 0.15% for CO in the Gaseous Fuel Dominant with EVs Scenario and the New Technology Dominant Scenario. When the emissions from the entire 25-year study period are compared with 1993 National Mobile Source Emissions, the reductions range from 0.02% for NO_X in the Gaseous Fuel Dominant Scenario to 2.53% for CO in the Gaseous Fuel Dominant with EVs Scenario.

Based on the analysis in the Environmental Assessment, the Department has determined that the implementation of the Alternative Transportation Program does not constitute a major Federal action significantly affecting the quality of the human environment, within the meaning of the NEPA. Therefore, the preparation of an Environmental Impact Statement is not required and the Department today is publishing a Finding of No Significant Impact elsewhere in this issue.

X. Impact on State Governments

Section 1(b)(9) of Executive Order 12866 (''Regulatory Planning and Review''), 58 FR 51735 (September 30, 1993) established the following principle for agencies to follow in rulemakings: ''Wherever feasible, agencies shall seek views of appropriate State, local, and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities. Each agency shall assess the effects of Federal regulations on State, local, and tribal governments, including specifically the availability of resources to carry out those mandates, and seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving regulatory objectives. In addition, agencies shall seek to harmonize Federal regulatory actions with regulated State, local and tribal regulatory and other governmental functions.'' Executive Order 12875 (''Enhancing Intergovernmental Partnership''), 58 FR 58093 (October 26, 1993) provides for reduction or mitigation, to the extent allowed by law, of the burden on State, local, and tribal governments of unfunded Federal mandates not required by statute.

Title II of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or tribal governments, or to the private sector, of $100 million or more. Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and tribal governments. The Department estimates that, in the aggregate, the costs to States in model year 1997 will be between $3.3 million and $7.4 million. The annual aggregate costs to the States should never exceed $13 million in FY 1995 dollars. The annual aggregate costs to State, local, and tribal governments and the private sector should never exceed $100 million in FY 1995 dollars. Therefore, preparation of a formal unfunded mandate analysis is not required. Because the rule does not contain a significant intergovernmental mandate, the procedural requirements in section 204 also do not apply to this rulemaking. However, DOE invited written comments and held three public hearings on the proposed rule. DOE received numerous comments and oral testimony from State elected officials and representatives of State executive offices and agencies with an interest in the subject of this rulemaking.

Section 507(o) of the Act explicitly prescribes the alternative fueled vehicle acquisition mandate for States which is reflected in subpart C of the regulation. Although the Act does not specifically authorize appropriation of funds to fully defray the costs of compliance, the costs and impact of the mandate are mitigated in a number of respects.

First, section 507(o) authorizes approval of acceptable alternative State plans to comply with the acquisition mandate by enlisting voluntary commitments from other fleet operators with fleets that are not subject to vehicle acquisition requirements under the Energy Policy Act of 1992. This gives States flexibility in developing a strategy for meeting the Act's vehicle acquisition percentages.

Second, section 507(i) authorizes the Department to grant exemptions from vehicle acquisition requirements for States in cases of financial hardship, in addition to exemptions when alternative fuel and alternative fueled vehicles are not available.

Third, Congress has authorized DOE to provide financial assistance to States for alternative fuel transportation programs. Section 409 of the Act specifically authorizes DOE to provide technical and financial assistance to States for this purpose. No funds have been appropriated yet for the section 409 program. However, DOE is currently developing a program to provide funds to States, some of which could be used to offset the incremental cost of obtaining alternative fueled vehicles required by this rule.

In developing this rule, the Department consulted with a focus group of State officials from the National Association of State Energy Officials which represents energy offices in 53 States, territories and the District of Columbia. The principal concern expressed by some of these officials was the potential for conflict between the DOE program and similar programs operating under EPA or State regulations. With respect to EPA, DOE has attempted to avoid unnecessary differences between its regulations and those already promulgated by EPA.

It is important that the overlap between the regulations and the EPA regulations is limited because the DOE program would apply in MSAs and CMSAs with a 1980 Bureau of Census population of 250,000 or more, and the EPA program applies only in non-attainment areas. Of the 22 non-attainment areas identified by EPA (59 FR 50043), nine areas in California and Texas are included in applications those States have filed with EPA to opt out of the EPA Clean Fuel Fleet Program. Those applications were pending as of the date of publication of this notice. In addition, DOE has been advised that EPA expects those areas within the Ozone Transport Commission (located in the Eastern United States) to be included in State requests to opt out of the program upon inception of the 49–State Low Emission Vehicle Program.

List of Subjects in 10 CFR Part 490

Appeal procedures, Energy, Energy conservation, Fuel, Gasoline, Motor vehicles, Oil imports, Petroleum, Recordkeeping and Reporting requirements, and Utilities.

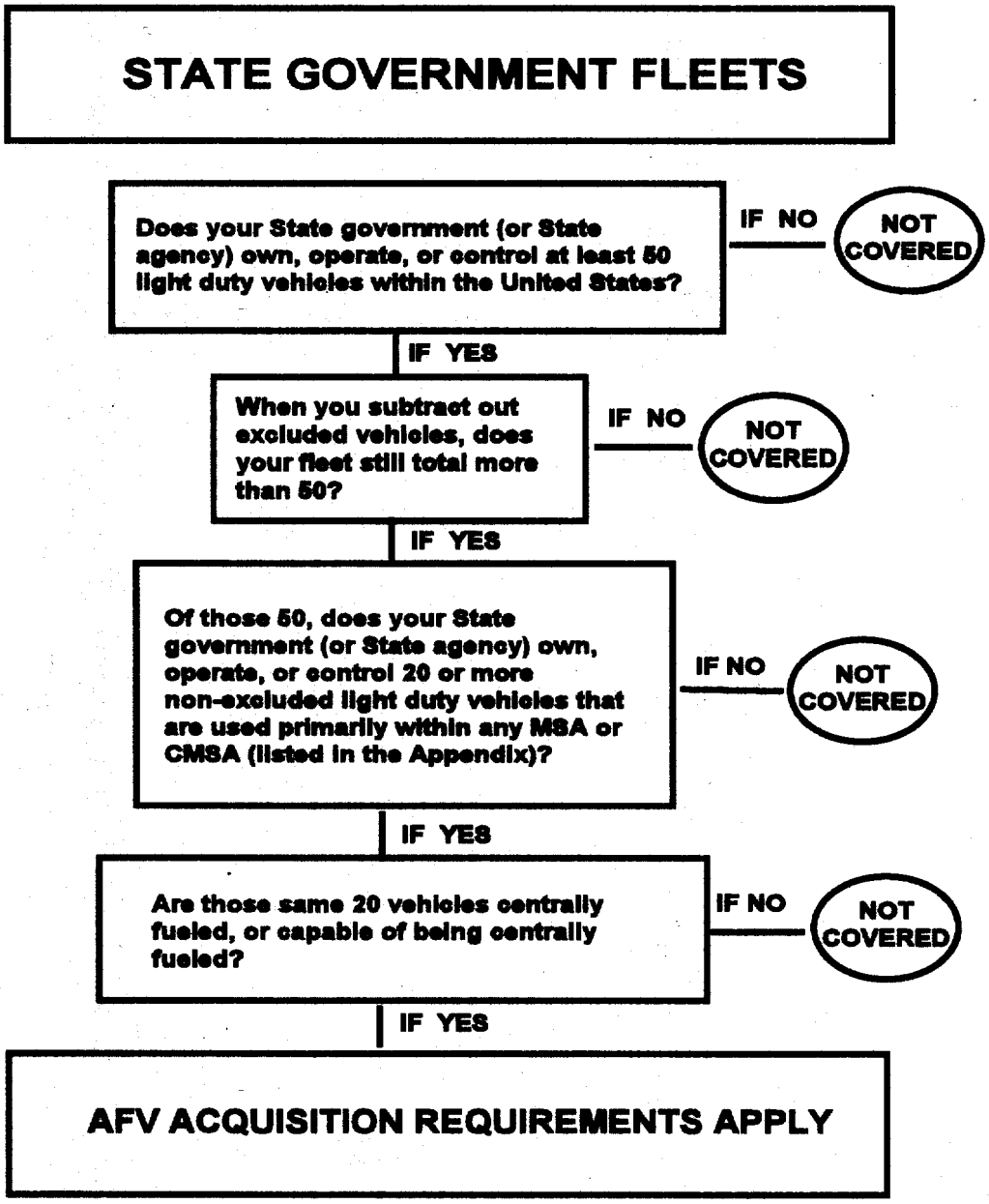
Issued in Washington, DC on March 5, 1996.

Brian T. Castelli,

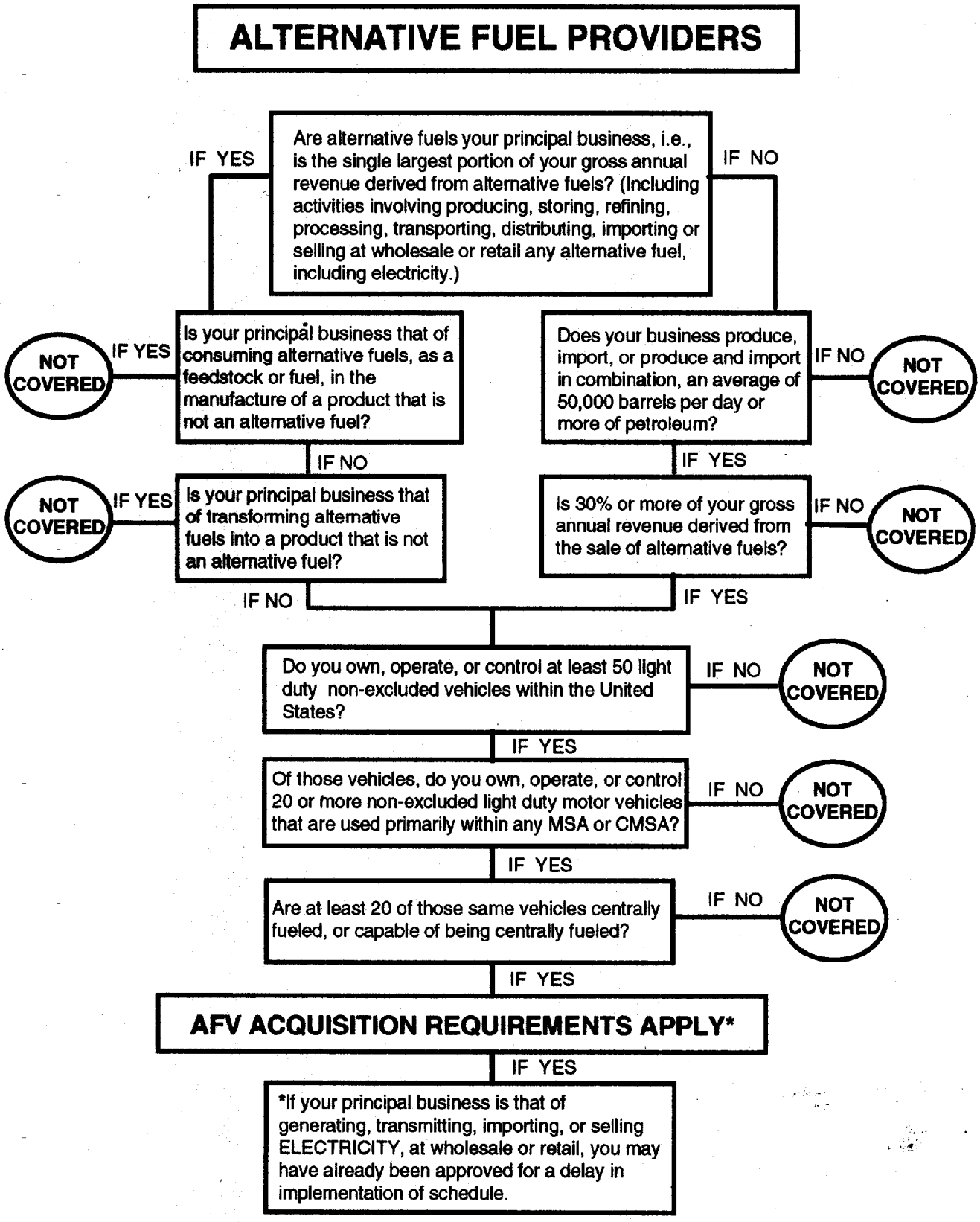
Chief-of-Staff, Energy Efficiency and Renewable Energy.

BILLING CODE 6450–01–P

Appendix A1


STATE GOVERNMENT FLEETS
Does your State government (or State agency) own, operate, or control at least 50 light duty vehicles within the United States?
IF NO
NOT COVERED
IF YES
When you subtract out excluded vehicles, does your fleet still total more than 50?
IF NO
NOT COVERED
IF YES
Of those 50, does your State government (or State agency) own, operate, or control 20 or more non-excluded light duty vehicles that are used primarily within any MSA or CMSA (listed in the Appendix)?
IF NO
NOT COVERED
IF YES
Are those same 20 vehicles centrally fueled, or capable of being centrally fueled?
IF NO
NOT COVERED
IF YES
AFV ACQUISITION REQUIREMENTS APPLY

Appendix A2



BILLING CODE 6450–01–C

For the reasons set forth in the Preamble, Title 10, Chapter II, Subchapter D, of the Code of Federal Regulations is amended by adding a new Part 490 as set forth below:

PART 490—ALTERNATIVE FUEL TRANSPORTATION PROGRAM

Subpart A—General Provisions

Sec.
490.1 Purpose and scope.
490.2 Definitions.
490.3 Excluded vehicles.
490.4 General information inquiries.
490.5 Requests for an interpretive ruling.
490.6 Petitions for generally applicable rulemaking.
490.7 Relationship to other law.

Appendix A to Subpart A of Part 490—Metropolitan Statistical Areas/Consolidated Metropolitan Statistical Areas with 1980 Populations of 250,000 or More

Subpart B—[Reserved]

Subpart C—Mandatory State Fleet Program

490.200 Purpose and scope.
490.201 Alternative fueled vehicle acquisition mandate schedule.
490.202 Acquisitions satisfying the mandate.
490.203 Light Duty Alternative Fueled Vehicle plan.
490.204 Process for granting exemptions.
490.205 Reporting requirements.
490.206 Violations.

Subpart D—Alternative Fuel Provider Vehicle Acquisition Mandate

490.300 Purpose and scope.
490.301 Definitions.
490.302 Vehicle acquisition mandate schedule.
490.303 Who must comply.
490.304 Which new light duty motor vehicles are covered.
490.305 Acquisitions satisfying the mandate.
490.306 Vehicle operation requirements.
490.307 Option for electric utilities.
490.308 Process for granting exemptions.
490.309 Annual reporting requirements.
490.310 Violations.

Subpart E—[Reserved]

Subpart F—Alternative Fueled Vehicle Credit Program

490.500 Purpose and scope.
490.501 Applicability.
490.502 Creditable actions.
490.503 Credit allocation.
490.504 Use of alternative fueled vehicle credits.
490.505 Credit accounts.
490.506 Alternative fueled vehicle credit transfers.
490.507 Credit activity reporting requirements.

Subpart G—Investigations and Enforcement

490.600 Purpose and scope.
490.601 Powers of the Secretary.
490.602 Special orders.
490.603 Prohibited acts.
490.604 Penalties and fines.
490.605 Statement of enforcement policy.
490.606 Proposed assessments and orders.
490.607 Appeals.

Authority: 42 U.S.C. 7191, 13211, 13235, 13251, 13257, 13258, 13260–3.

Subpart A—General Provisions

§ 490.1 Purpose and Scope.

(a) The provisions of this part implement the alternative fuel transportation program under titles III, IV, V, and VI of the Energy Policy Act of 1992. (Pub. L. 102–486)

(b) The provisions of this subpart cover the definitions applicable throughout this part and procedures to obtain an interpretive ruling and to petition for a generally applicable rule to amend this part.

§ 490.2 Definitions.

The following definitions apply to this part—

Acquire means to take into possession or control.

Act means the Energy Policy Act of 1992 (Pub. L. 102–486) and any amendments thereof.

After-Market Converted Vehicle means an Original Equipment Manufacturer vehicle that is reconfigured by a conversion company, which is not under contract to the Original Equipment Manufacturer, to operate on an alternative fuel and whose conversion kit components are under warranty of the conversion company.

Alternative Fuel means methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; coal-derived liquid fuels; fuels (other than alcohol) derived from biological materials (including neat biodiesel); and electricity (including electricity from solar energy).

Alternative Fueled Vehicle means a dedicated vehicle or a dual fueled vehicle (including a flexible fuel vehicle as defined by this section).

Assistant Secretary means the Assistant Secretary for Energy Efficiency and Renewable Energy or any other DOE official to whom the Assistant Secretary's duties under this part may be redelegated by the Secretary.

Automobile means a 4-wheeled vehicle propelled by conventional fuel, or by alternative fuel, manufactured primarily for use on public streets, roads, and highways (except a vehicle operated only on a rail line), and rated at

(1) Not more than 6,000 pounds gross vehicle weight; or

(2) More than 6,000, but less than 10,000 pounds gross vehicle weight, if the Secretary of Transportation has decided, by rule, that the vehicle meets the criteria in section 501(1) of the Motor Vehicle Information and Cost Savings Act, as amended, 49 U.S.C. 32901(a)(3).

Capable of Being Centrally Fueled means a vehicle can be refueled at least 75 percent of its time at the location that is owned, operated, or controlled by the fleet or covered person, or is under contract with the fleet or covered person for refueling purposes.

Centrally Fueled means that a vehicle is fueled at least 75 percent of the time at a location that is owned, operated, or controlled by the fleet or covered person, or is under contract with the fleet or covered person for refueling purposes.

Control—

(1) When it is used to determine whether one person controls another or whether two persons are under common control, means any one or a combination of the following:

(i) A third person or firm has equity ownership of 51 percent or more in each of two firms; or

(ii) Two or more firms have common corporate officers, in whole or in substantial part, who are responsible for the day-to-day operation of the companies; or

(iii) One person or firm leases, operates, or supervises 51 percent or more of the equipment and/or facilities of another person or firm; owns 51 percent or more of the equipment and/or facilities of another person or firm; or has equity ownership of 51 percent or more of another person or firm.

(2) When it is used to refer to the management of vehicles, means a person has the authority to decide who can operate a particular vehicle, and the purposes for which the vehicle can be operated.

Covered Person means a person that owns, operates, leases, or otherwise controls—

(1) A fleet, as defined by this section, that contains at least 20 light duty motor vehicles that are centrally fueled or capable of being centrally fueled, and are used primarily within a metropolitan statistical area or a consolidated metropolitan statistical area, as established by the Bureau of the Census, with a 1980 population of 250,000 or more (as set forth in Appendix A to this subpart) or in a Federal Register notice; and

(2) at least 50 light duty motor vehicles within the United States.

Dealer Demonstration Vehicle means any vehicle that is operated by a motor

vehicle dealer solely for the purpose of promoting motor vehicle sales, either on the sales lot or through other marketing or sales promotions, or for permitting potential purchasers to drive the vehicle for pre-purchase or pre-lease evaluation.

Dedicated Vehicle means—

(1) An automobile that operates solely on alternative fuel; or

(2) A motor vehicle, other than an automobile, that operates solely on alternative fuel.

DOE means the Department of Energy.

Dual Fueled Vehicle means—

(1) An automobile that meets the criteria for a dual fueled automobile as that term is defined in section 513(h)(1)(C) of the Motor Vehicle Information and Cost Savings Act, 49 U.S.C. 32901(a)(8); or

(2) A motor vehicle, other than an automobile, that is capable of operating on alternative fuel and on gasoline or diesel fuel; or

(3) A flexible fuel vehicle.

Electric-hybrid Vehicle means a vehicle primarily powered by an electric motor that draws current from rechargeable storage batteries, fuel cells or other sources of electric current and also relies on a non-electric source of power.

Electric Motor Vehicle means a motor vehicle primarily powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, photovoltaic arrays, or other sources of electric current and may include an electric-hybrid vehicle.

Emergency Motor Vehicle means any vehicle that is legally authorized by a government authority to exceed the speed limit to transport people and equipment to and from situations in which speed is required to save lives or property, such as a rescue vehicle, fire truck or ambulance.

Fleet means a group of 20 or more light duty motor vehicles, excluding certain categories of vehicles as provided by section 490.3, used primarily in a metropolitan statistical area or consolidated metropolitan statistical area, as established by the Bureau of the Census as of December 31, 1992, with a 1980 Census population of more than 250,000 (listed in Appendix A to this Subpart), that are centrally fueled or capable of being centrally fueled, and are owned, operated, leased, or otherwise controlled—

(1) By a person who owns, operates, leases, or otherwise controls 50 or more light duty motor vehicles within the United States and its possessions and territories;

(2) By any person who controls such person;

(3) By any person controlled by such person; and

(4) By any person under common control with such person.

Flexible Fuel Vehicle means any motor vehicle engineered and designed to be operated on any mixture of two or more different fuels.

Law Enforcement Motor Vehicle means any vehicle which is primarily operated by a civilian or military police officer or sheriff, or by personnel of the Federal Bureau of Investigation, the Drug Enforcement Administration, or other enforcement agencies of the Federal government, or by State highway patrols, municipal law enforcement, or other similar enforcement agencies, and which is used for the purpose of law enforcement activities including, but not limited to, chase, apprehension, and surveillance of people engaged in or potentially engaged in unlawful activities.

Lease means the use and control of a motor vehicle for transportation purposes pursuant to a rental contract or similar arrangement with a term of 120 days or more.

Light Duty Motor Vehicle means a light duty truck or light duty vehicle, as such terms are defined under section 216(7) of the Clean Air Act (42 U.S.C. § 7550(7)), having a gross vehicle weight rating of 8,500 pounds or less, before any after-market conversion to alternative fuel operation.

Model Year means the period from September 1 of the previous calendar year through August 31.

Motor Vehicle means a self-propelled vehicle, other than a non-road vehicle, designed for transporting persons or property on a street or highway.

Non-road Vehicle means a vehicle not licensed for on-road use, including such vehicles used principally for industrial, farming or commercial use, for rail transportation, at an airport, or for marine purposes.

Original Equipment Manufacturer means a manufacturer that provides the original design and materials for assembly and manufacture of its product.

Original Equipment Manufacturer Vehicle means a vehicle engineered, designed, produced and warranted by an Original Equipment Manufacturer.

Person means any individual, partnership, corporation, voluntary association, joint stock company, business trust, Governmental entity, or other legal entity in the United States except United States Government entities.

State means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

Used Primarily, as utilized in the definition of ''fleet,'' means that a majority of a vehicle's total annual miles are accumulated within a covered metropolitan or consolidated metropolitan statistical area.

§ 490.3 Excluded vehicles.

When counting light duty motor vehicles to determine under this part whether a person has a fleet or to calculate alternative fueled vehicle acquisition requirements, the following vehicles are excluded—

(a) Motor vehicles held for lease or rental to the general public, including vehicles that are owned or controlled primarily for the purpose of short-term rental or extended-term leasing, without a driver, pursuant to a contract;

(b) Motor vehicles held for sale by motor vehicle dealers, including demonstration motor vehicles;

(c) Motor vehicles used for motor vehicle manufacturer product evaluations or tests, including but not limited to, light duty motor vehicles owned or held by a university research department, independent testing laboratory, or other such evaluation facility, solely for the purpose of evaluating the performance of such vehicle for engineering, research and development or quality control reasons;

(d) Law enforcement vehicles;

(e) Emergency motor vehicles;

(f) Motor vehicles acquired and used for purposes that the Secretary of Defense has certified to DOE must be exempt for national security reasons;

(g) Nonroad vehicles; and

(h) Motor vehicles which, when not in use, are normally parked at the personal residences of the individuals that usually operate them, rather than at a central refueling, maintenance, or business location.

§ 490.4 General information inquiries.

DOE responses to inquiries with regard to the provisions of this part that are not filed in compliance with §§ 490.5 or 490.6 of this part constitute general information and the responses provided shall not be binding on DOE.

§ 490.5 Requests for an interpretive ruling.

(a) *Right to file.* Any person who is or may be subject to this part shall have the right to file a request for an interpretive ruling on a question with regard to how the regulations apply to particular facts and circumstances.

(b) *How to file.* A request for an interpretive ruling shall be filed—

(1) With the Assistant Secretary;

(2) In an envelope labeled ''Request for Interpretive Ruling under 10 CFR Part 490;'' and

(3) By messenger or mail at the Office of Energy Efficiency and Renewable Energy, EE–33, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585 or at such other address as DOE may provide by notice in the Federal Register.

(c) *Content of request for interpretive ruling.* At a minimum, a request under this section shall—

(1) Be in writing;

(2) Be labeled ''Request for Interpretive Ruling Under 10 CFR Part 490;''

(3) Identify the name, address, telephone number, and any designated representative of the person requesting the interpretive ruling;

(4) State the facts and circumstances relevant to the request;

(5) Be accompanied by copies of relevant supporting documents, if any;

(6) Specifically identify the pertinent regulations and the related question on which an interpretive ruling is sought with regard to the relevant facts and circumstances; and

(7) Contain any arguments in support of the terms of an interpretation the requester is seeking.

(d) *Public comment.* DOE may give public notice of any request for an interpretive ruling and invite public comment.

(e) *Opportunity to respond to public comment.* DOE may provide an opportunity for any person who requested an interpretive ruling to respond to public comments.

(f) *Other sources of information.* DOE may—

(1) Conduct an investigation of any statement in a request;

(2) Consider any other source of information in evaluating a request for an interpretive ruling; and

(3) Rely on previously issued interpretive rulings dealing with the same or a related issue.

(g) *Informal conference.* DOE, on its own initiative, may convene an informal conference with the person requesting an interpretive ruling.

(h) *Effect of an interpretive ruling.* The authority of an interpretive ruling shall be limited to the person requesting such ruling and shall depend on the accuracy and completeness of the facts and circumstances on which the interpretive ruling is based. An interpretive ruling by the Assistant Secretary shall be final for DOE.

(i) *Reliance on an interpretive ruling.* No person who obtains an interpretive ruling under this section shall be subject to an enforcement action for civil penalties or criminal fines for actions reasonably taken in reliance thereon, but a person may not act in reliance on an interpretive ruling that is administratively rescinded or modified, judicially invalidated, or its prospective effect is overruled by statute or regulation.

(j) *Denials of requests for an interpretive ruling.* DOE shall deny a request for an interpretive ruling if DOE determines that—

(1) There is insufficient information upon which to base an interpretive ruling;

(2) The questions posed should be treated in a general notice of proposed rulemaking under 42 U.S.C. 7191 and 5 U.S.C. 553;

(3) There is an adequate procedure elsewhere in this part for addressing the question posed such as a petition for exemption; or

(4) For other good cause.

(k) *Public file.* DOE may file a copy of an interpretive ruling in a public file labeled ''Interpretive Rulings Under 10 CFR Part 490'' which shall be available during normal business hours for public inspection at the DOE Freedom of Information Reading Room at 1000 Independence Avenue, SW, Washington, DC 20585, or at such other addresses as DOE may announce in a Federal Register notice.

§ 490.6 Petitions for generally applicable rulemaking.

(a) *Right to file.* Pursuant to 42 U.S.C. 7191 and 5 U.S.C. 553(e), any person may file a petition for generally applicable rulemaking under titles III, IV, and V of the Act with the DOE General Counsel.

(b) *How to file.* A petition for generally applicable rulemaking under this section shall be filed by mail or messenger in an envelope addressed to the Office of General Counsel, GC–1, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

(c) *Content of rulemaking petitions.* A petition under this section must—

(1) Be labeled ''Petition for Rulemaking Under 10 CFR Part 490'';

(2) Describe with particularity the terms of the rule being sought;

(3) Identify the provisions of law that direct, authorize, or affect the issuance of the rules being sought; and

(4) Explain why DOE should not choose to make policy by precedent through interpretive rulings, petitions for exemption, or other adjudications.

(d) *Determination upon rulemaking petitions.* After considering the petition and other information deemed to be appropriate, DOE may grant the petition and issue an appropriate rulemaking notice, or deny the petition because the rule being sought—

(1) Would be inconsistent with statutory law;

(2) Would establish a generally applicable policy in an area that should be left to case-by-case determinations;

(3) Would establish a policy inconsistent with the underlying statutory purposes; or

(4) For other good cause.

§ 490.7 Relationship to other law.

(a) Nothing in this part shall be construed to require or authorize sale of, or conversion to, light duty alternative fueled motor vehicles in violation of applicable regulations of any Federal, State or local government agency.

(b) Nothing in this part shall be construed to require or authorize the use of a motor fuel in violation of applicable regulations of any Federal, State, or local government agency.

Appendix A To Subpart A of Part 490

Metropolitan Statistical Areas/ Consolidated Metropolitan Statistical Areas With 1980 Populations of 250,000 or more

Albany-Schenectady-Troy MSA NY
Albuquerque MSA NM
Allentown-Bethlehem-Easton MSA PA
Appleton-Oshkosh-Neenah MSA WI
Atlanta MSA GA
Augusta-Aiken MSA GA-SC
Austin-San Marcos MSA TX
Bakersfield MSA CA
Baton Rouge MSA LA
Beaumont-Port Arthur MSA TX
Binghamton MSA NY
Birmingham MSA AL
Boise City MSA ID
Boston-Worcester-Lawrence CMSA MA-NH-ME-CT
Buffalo-Niagara Falls MSA NY
Canton-Massillon MSA OH
Charleston MSA SC
Charleston MSA WV
Charlotte-Gastonia-Rock Hill MSA NC–SC
Chattanooga MSA TN–GA
Chicago-Gary-Kenosha CMSA IL–IN–WI
Cincinnati-Hamilton CMSA OH–KY–IN
Cleveland-Akron CMSA OH
Colorado Springs MSA CO
Columbia MSA SC
Columbus MSA OH
Columbus MSA GA–AL
Corpus Christi MSA TX
Dallas-Fort Worth CMSA TX
Davenport-Moline-Rock Island MSA IA–IL
Dayton-Springfield MSA OH
Daytona Beach MSA FL
Denver-Boulder-Greeley CMSA CO
Des Moines MSA IA
Detroit-Ann Arbor-Flint CMSA MI
Duluth MSA MN–WI
El Paso MSA TX
Erie MSA PA
Eugene-Springfield MSA OR
Evansville-Henderson MSA IN–KY
Fort Wayne MSA IN
Fresno MSA CA

Grand Rapids-Muskegon-Holland MSA MI
Greensboro-Winston Salem-High Point MSA NC
Greenville-Spartanburg-Anderson MSA SC
Harrisburg-Lebanon-Carlisle MSA PA
Hartford MSA CT
Hickory-Morganton MSA NC
Honolulu MSA HI
Houston-Galveston-Brazoria CMSA TX
Huntington-Ashland MSA WV–KY–OH
Indianapolis MSA IN
Jackson MSA MS
Jacksonville MSA FL
Johnson City-Kingsport-Bristol MSA TN–VA
Johnstown MSA PA
Kalamazoo-Battle Creek MSA MI
Kansas City MSA MO–KS
Knoxville MSA TN
Lakeland-Winter Haven MSA FL
Lancaster MSA PA
Lansing-East Lansing MSA MI
Las Vegas MSA NV–AZ
Lexington MSA KY
Little Rock-N. Little Rock MSA AR
Los Angeles-Riverside-Orange County CMSA CA
Louisville MSA KY–IN
Macon MSA GA
Madison MSA WI
McAllen-Edinburg-Mission MSA TX
Melbourne-Titusville-Palm Bay MSA FL
Memphis MSA TN–AR–MS
Miami-Fort Lauderdale CMSA FL
Milwaukee-Racine CMSA WI
Minneapolis-St. Paul MSA MN–WI
Mobile MSA AL
Modesto MSA CA
Montgomery MSA AL
Nashville MSA TN
New London-Norwich MSA CT–RI
New Orleans MSA LA
New York-N. New Jersey-Long Island CMSA NY–NJ–CT–PA
Norfolk-Virginia Beach-Newport News MSA VA–NC
Oklahoma City MSA OK
Omaha MSA NE–IA
Orlando MSA FL
Pensacola MSA FL
Peoria-Pekin MSA IL
Philadelphia-Wilmington-Atlantic City CMSA PA–NJ DE–MD
Phoenix-Mesa MSA AZ
Pittsburgh MSA PA
Portland-Salem CMSA OR–WA
Providence-Fall River-Warwick MSA RI–MA
Raleigh-Durham-Chapel Hill MSA NC
Reading MSA PA
Richmond-Petersburg MSA VA
Rochester MSA NY
Rockford MSA IL
Sacramento-Yolo CMSA CA
Saginaw-Bay City-Midland MSA MI
St. Louis MSA MO–IL
Salinas MSA CA
Salt Lake City-Ogden MSA UT
San Antonio MSA TX
San Diego MSA CA
San Francisco-Oakland-San Jose CMSA CA
San Juan MSA PR
Santa Barbara-Santa Maria-Lompoc MSA CA
Scranton-Wilkes Barre-Hazleton MSA PA
Seattle-Tacoma-Bremerton CMSA WA
Shreveport-Bossier City MSA LA
Spokane MSA WA
Springfield MSA MA
Stockton-Lodi MSA CA
Syracuse MSA NY
Tampa-St. Petersburg-Clearwater MSA FL
Toledo MSA OH
Tucson MSA AZ
Tulsa MSA OK
Utica-Rome MSA NY
Washington-Baltimore CMSA DC–MD–VA–WV
West Palm Beach-Boca Raton MSA FL
Wichita MSA KS
York MSA PA
Youngstown-Warren MSA OH

Subpart B—[Reserved]

Subpart C—Mandatory State Fleet Program

§ 490.200 Purpose and scope.

This subpart sets forth rules implementing the provisions of Section 507(o) of the Act which requires, subject to some exemptions, that certain percentages of new light duty motor vehicles acquired for State fleets be alternative fueled vehicles.

§ 490.201 Alternative fueled vehicle acquisition mandate schedule.

(a) Except as otherwise provided in this part, of the new light duty motor vehicles acquired annually for State government fleets, including agencies thereof but excluding municipal fleets, the following percentages shall be alternative fueled vehicles for the following model years;

(1) 10 percent for model year 1997;

(2) 15 percent for model year 1998;

(3) 25 percent for model year 1999;

(4) 50 percent for model year 2000; and

(5) 75 percent for model year 2001 and thereafter.

(b) Each State shall calculate its alternative fueled vehicle acquisition requirements for the State government fleets, including agencies thereof, by applying the alternative fueled vehicle acquisition percentages for each model year to the total number of new light duty motor vehicles to be acquired during that model year for those fleets.

(c) If the calculation performed under paragraph (b) of this section produces a number that requires the acquisition of a partial vehicle, an adjustment to the acquisition number will be made by rounding the number of vehicles down the next whole number if the fraction is less than one half and by rounding the number of vehicles up to the next whole number if the fraction is equal to or greater than one half.

(d) A State fleet that first becomes subject to this part after model year 1997 shall acquire alternative fueled vehicles in the next model year at the percentage applicable to that model year according to the schedule in paragraph (a) of this section, unless the State is granted an exemption or reduction of the acquisition percentage pursuant to the procedures and criteria in section 490.204.

§ 490.202 Acquisitions satisfying the mandate.

The following actions within a model year qualify as acquisitions for the purpose of compliance with the requirements of section 490.201 of this part:

(a) The purchase or lease of an Original Equipment Manufacturer light duty vehicle (regardless of the model year of manufacture), capable of operating on alternative fuels that was not previously under control of the State or State agency;

(b) The purchase or lease of an after-market converted light duty vehicle (regardless of model year of manufacture), that was not previously under control of the State or State agency;

(c) The conversion of a newly purchased or leased light duty vehicle to operate on alternative fuels within four months after the vehicle is acquired for a State fleet; and

(d) The application of alternative fueled vehicle credits allocated under subpart F of this part.

§ 490.203 Light Duty Alternative Fueled Vehicle Plan.

(a) *General Provisions.* (1) In lieu of meeting its requirements under section 490.201 exclusively with acquisitions for State fleets, a State may follow a Light Duty Alternative Fueled Vehicle Plan that has been approved by DOE under this section.

(2) Any Light Duty Alternative Fueled Vehicle Plan must provide for voluntary acquisitions or conversions, or combinations thereof, by State, local, and private fleets that equal or exceed the State's alternative fuel vehicle acquisition requirement under section 490.201.

(3) Any acquisitions of light duty alternative fueled vehicles by participants in the State plan may be included for purposes of compliance, irrespective of whether the vehicles are in excluded categories set forth in section 490.3 of this part.

(4) Except as provided in paragraph (h) of this section or except for a fleet exempt under section 490.204, a State that does not have an approved plan in effect under this section is subject to the State fleet acquisition percentage requirements of section 490.201.

(5) If a significant commitment under an approved plan is not met by a participant of a plan, the State shall

meet its percentage requirements under section 490.201 or submit to DOE an amendment to the plan for DOE approval.

(b) *Required elements of a plan.* Each plan must include the following elements:

(1) Certification by the Governor, or the Governor's designee, that the plan meets the requirements of this subpart;

(2) Identification of State, local and private fleets that will participate in the plan;

(3) Number of new alternative fueled vehicles to be acquired by each plan participant;

(4) A written statement from each plan participant to assure commitment;

(5) A statement of contingency measures by the State to offset any failure to fulfill significant commitments by plan participants, in order to meet the requirements of section 490.201;

(6) A provision by the State to monitor and verify implementation of the plan;

(7) A provision certifying that all acquisitions and conversions under the plan are voluntary and will meet the requirements of § 247 of the Clean Air Act, as amended (42 U.S.C. 7587) and all applicable safety requirements.

(c) *When to submit plan.* (1) For model year 1997, a State shall submit its plan on or before March 14, 1997.

(2) Beginning with model year 1998, a State shall submit its plan to DOE no later than June 1 prior to the first model year covered by such plan.

(d) *Review and approval.* DOE shall review and approve a plan which meets the requirements of this subpart within 60 days of the date of receipt of the plan by DOE at the address in paragraph (g)(1) of this section.

(e) *Disapproval of plans.* If DOE disapproves or requests a State to submit additional information, the State may revise and resubmit the plan to DOE within a reasonable time.

(f) *How a State may modify an approved plan.* If a State determines that it cannot successfully implement its plan, it may submit to DOE for approval, at any time, the proposed modifications with adequate justifications.

(g) *Where to submit plans.* (1) A State shall submit to DOE an original and two copies of the plan and shall be addressed to the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–33, 1000 Independence Ave., SW., Washington, DC 20585, or to such other address as DOE may announce in a Federal Register notice.

(2) Any requests for modifications shall also be sent to the address in paragraph (g)(1) of this section.

(h) *MY 1997 Exemption.* (1) On or after September 1, 1996, a State shall be deemed automatically exempt from section 490.201 (a)(1) until DOE makes a final determination on a timely application to approve a plan for model year 1997 under this section if the State:

(i) Has submitted the application; or

(ii) Has sent a written notice to the Assistant Secretary, at the address under paragraph (g)(1) of this section, that it will file such an application on or before March 14, 1997.

(2) During the period of an automatic exemption under this paragraph, a State may procure light duty motor vehicles in accordance with its normal procurement policies.

§ 490.204 Process for granting exemptions.

(a) To obtain an exemption, in whole or in part, from the vehicle acquisition mandate in section 490.201 of this part, a State shall submit to DOE a written request for exemption, along with supporting documentation which must demonstrate that—

(1) Alternative fuels that meet the normal requirements and practices of the principal business of the State fleet are not available from fueling sites that would permit central fueling of fleet vehicles in the area in which the vehicles are to be operated; or

(2) Alternative fueled vehicles that meet the normal requirements and practices of the principal business of the State fleet are not available for purchase or lease commercially on reasonable terms and conditions in the State; or

(3) The application of such requirements would pose an unreasonable financial hardship.

(b) Requests for exemption may be submitted at any time and must be accompanied with supporting documentation.

(c) Exemptions are granted for one model year only, and they may be renewed annually, if supporting documentation is provided.

(d) Exemptions may be granted in whole or in part. When granting an exemption in part, DOE may, depending upon the circumstances, completely relieve a State from complying with a portion of the vehicle acquisition requirements for a model year, or it may require a State to acquire all or some of the exempted vehicles in future model years.

(e) If a State is seeking an exemption under—

(1) Paragraph (a)(1) of this section, the types of documentation that are to accompany the request must include, but are not limited to, maps of vehicle operation zones and maps of locations providing alternative fuel; or

(2) Paragraph (a)(2) of this section, the types of documentation that are to accompany the request must include, but are not limited to, alternative fueled vehicle purchase or lease requests, a listing of vehicles that meet the normal practices and requirements of the State fleet, and any other documentation that exhibits good faith efforts to acquire alternative fueled vehicles; or

(3) Paragraph (a)(3) of this section, it must submit a statement identifying what portion of the alternative fueled vehicle acquisition requirement should be subject to the exemption and describing the specific nature of the financial hardship that precludes compliance.

(f) Requests for exemption shall be addressed to the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–33, 1000 Independence Ave., SW., Washington, DC 20585, or to such other address as DOE may announce in a Federal Register notice.

(g) The Assistant Secretary shall provide to the State, within 45 days of receipt of a request that complies with this section, a written determination as to whether the State's request has been granted or denied.

(h) If the Assistant Secretary denies an exemption, in whole or in part, and the State wishes to exhaust administrative remedies, the State must appeal within 30 days of the date of the determination, pursuant to 10 CFR part 1003, subpart C, to the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585. The Assistant Secretary's determination shall be stayed during the pendency of an appeal under this paragraph.

§ 490.205 Reporting requirements.

(a) Any State subject to the requirements of this subpart must file an annual report for each State fleet on or before the December 31 after the close of the model year, beginning with model year 1997. The State annual report may consist of a single State report or separately prepared State agency reports.

(b) The report shall include the following information:

(1) Number of new light duty motor vehicles acquired for the fleet by a State during the model year;

(2) Number of new light duty alternative fueled vehicles that are required to be acquired during the model year;

(3) Number of new light duty alternative fueled vehicle acquisitions by the State during the model year;

(4) Number of alternative fueled vehicle credits applied against acquisition requirements;

(5) For each new light duty alternative fueled vehicle acquisition—

(i) Vehicle make and model;

(ii) Model year;

(iii) Vehicle identification number;

(iv) Dedicated or dual-fueled (including flexible fuel); and

(v) Type of alternative fuel the vehicle is capable of operating on; and

(6) Number of light duty alternative fueled vehicles acquired by municipal and private fleets during the model year under an approved Light Duty Alternative Fueled Vehicle Plan (if applicable).

(c) If credits are applied against vehicle acquisition requirements, then a credit activity report, as described in subpart F of this part, must be submitted with the report under this section to DOE.

(d) Records shall be maintained and retained for a period of three years.

(e) All reports, marked ''Annual Report,'' shall be sent to the Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, EE–33, 1000 Independence Ave., SW, Washington, DC, 20585, or such other address as DOE may provide by notice in the Federal Register.

§ 490.206 Violations.

Violations of this subpart are subject to investigation and enforcement under subpart G of this part.

Subpart D—Alternative Fuel Provider Vehicle Acquisition Mandate

§ 490.300 Purpose and Scope.

This subpart implements section 501 of the Act, which requires, subject to some exemptions, that certain annual percentages of new light duty motor vehicles acquired by alternative fuel providers must be alternative fueled vehicles.

§ 490.301 Definitions.

In addition to the definitions found in section 490.2, the following definitions apply to this subpart—

Affiliate means a person that, directly or indirectly, controls, is controlled by, or is under common ownership or control of a person subject to vehicle acquisition requirements in this part.

Alternative Fuels Business means activities undertaken to derive revenue from—

(1) Producing, storing, refining, processing, transporting, distributing, importing, or selling at wholesale or retail any alternative fuel other than electricity; or

(2) Generating, transmitting, importing, or selling at wholesale or retail electricity.

Business Unit means a semi-autonomous major grouping of activities for administrative purposes and organizational structure within a business entity and that is controlled by or under control of a person subject to vehicle acquisition requirements in this part.

Division means a major administrative unit of an enterprise comprising at least several enterprise units or constituting a complete integrated unit for a specific purpose and that is controlled by or under control of a person subject to vehicle acquisition requirements in this part.

Normal Requirements and Practices means the operating business practices and required conditions under which the principal business of a person subject to vehicle acquisition requirements in this part operates.

Principal Business means the sales-related activity that produces the greatest gross revenue.

Substantial Portion means that at least 30 percent of the annual gross revenue of a covered person is derived from the sale of alternative fuels.

Substantially Engaged means that a covered person, or affiliate, division, or other business unit thereof, regularly derives more than a negligible amount of sales-related gross revenue from an alternative fuels business.

§ 490.302 Vehicle acquisition mandate schedule.

(a) Except as provided in section 490.304 of this part, of the light duty motor vehicles newly acquired by a covered person described in section 490.303 of this part, the following percentages shall be alternative fueled vehicles for the following model years:

(1) 30 percent for model year 1997.

(2) 50 percent for model year 1998.

(3) 70 percent for model year 1999.

(4) 90 percent for model year 2000 and thereafter.

(b) Except as provided in section 490.304 of this part, this acquisition schedule applies to all light duty motor vehicles that a covered person newly acquires for use within the United States.

(c) If, when the mandated acquisition percentage of alternative fuel vehicles is applied to the number of new light duty motor vehicles to be acquired by a covered person subject to this subpart, a number results that requires the acquisition of a partial vehicle, an adjustment will be made to the required acquisition number by rounding down to the next whole number if the fraction is less than one half and by rounding up the number of vehicles to the next whole number if the fraction is equal to or greater than one half.

(d) Only acquisitions satisfying the mandate, as defined by section 490.305, count toward compliance with the acquisition schedule in paragraph (a) of this section.

(e) A covered person that is first subject to the acquisition requirements of this part after model year 1997 shall acquire alternative fueled vehicles in the next model year at the percentage applicable to that model year, according to the schedule in paragraph (a) of this section, unless the covered person is granted an exemption or reduction of the acquisition percentage pursuant to the procedures and criteria in section 490.308.

§ 490.303 Who must comply.

(a) Except as provided by paragraph (b) of this section, a covered person must comply with the requirements of this subpart if that person is—

(1) A covered person whose principal business is producing, storing, refining, processing, transporting, distributing, importing or selling at wholesale or retail any alternative fuel other than electricity; or

(2) A covered person whose principal business is generating, transmitting, importing, or selling, at wholesale or retail, electricity; or

(3) A covered person—

(i) Who produces, imports, or produces and imports in combination, an average of 50,000 barrels per day or more of petroleum; and

(ii) A substantial portion of whose business is producing alternative fuels.

(b) This subpart does not apply to a covered person or affiliate, division, or other business unit of such person whose principal business is—

(1) transforming alternative fuels into a product that is not an alternative fuel; or

(2) consuming alternative fuels as a feedstock or fuel in the manufacture of a product that is not an alternative fuel.

§ 490.304 Which new light duty motor vehicles are covered.

(a) *General rule.* Except as provided in paragraph (b) of this section, the vehicle acquisition mandate schedule in section 490.302 of this part applies to all light duty motor vehicles newly acquired for use within the United States by a covered person described in section 490.303 of this part.

(b) *Exception.* If a covered person has more than one affiliate, division, or

other business unit, then section 490.302 of this part only applies to light duty motor vehicles newly acquired by an affiliate, division, or other such business unit which is substantially engaged in the alternative fuels business.

§ 490.305 Acquisitions satisfying the mandate.

The following actions within the model year qualify as acquisitions for the purpose of compliance with the requirements of section 490.302 of this part—

(a) The purchase or lease of an Original Equipment Manufacturer light duty vehicle (regardless of the model year of manufacture), capable of operating on alternative fuels that was not previously under the control of the covered person;

(b) The purchase or lease of an after-market converted light duty vehicle (regardless of the model year of manufacture), that was not previously under the control of the covered person; and

(c) The conversion of a newly purchased or leased light duty vehicle to operate on alternative fuels within four months after the vehicle is acquired by a covered person; and

(d) The application of alternative fueled vehicle credits allocated under subpart F of this part.

§ 490.306 Vehicle operation requirements.

The alternative fueled vehicles acquired pursuant to section 490.302 of this part shall be operated solely on alternative fuels, except when these vehicles are operating in an area where the appropriate alternative fuel is unavailable.

§ 490.307 Option for Electric Utilities.

(a) A covered person or its affiliate, division, or business unit, whose principal business is generating, transmitting, importing, or selling, at wholesale or retail, electricity has the option of delaying the vehicle acquisition mandate schedule in section 490.302 until January 1, 1998, if the covered person intends to comply with this regulation by acquiring electric motor vehicles.

(b) If a covered person or its affiliate, division, or business unit, whose principal business is generating, transmitting, importing, or selling at wholesale or retail electricity has notified the Department as required by the Act, of its intent to acquire electric motor vehicles, the following percentages of new light duty motor vehicles acquired shall be alternative fueled vehicles for the following time periods:

(1) 30 percent from January 1, 1998 to August 31, 1998.

(2) 50 percent for model year 1999.

(3) 70 percent for model year 2000.

(4) 90 percent for model year 2001 and thereafter.

(c) Any covered person or its affiliate, division, or business unit, that chooses the option provided by this section may apply for an exemption from the vehicle acquisition mandate in accordance with section 490.308 of this regulation.

(d) Any covered person or its affiliate, division, or business unit, that chooses to rescind its election of the option provided in this section shall be required, unless otherwise exempt, to acquire alternative fueled vehicles in accordance with the vehicle acquisition schedule in section 490.302.

§ 490.308 Process for granting exemptions.

(a) To obtain an exemption from the vehicle acquisition mandate in this subpart, a covered person, or its affiliate, division, or business unit which is subject to section 490.302 of this part, shall submit a written request for exemption to the Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, EE–33, 1000 Independence Ave., SW., Washington, DC 20585, or such other address as DOE may publish in the Federal Register, along with the supporting documentation required by this section.

(b) A covered person requesting an exemption must demonstrate that—

(1) Alternative fuels that meet the normal requirements and practices of the principal business of the covered person are not available from fueling sites that would permit central fueling of that person's vehicles in the area in which the vehicles are to be operated; or

(2) Alternative fueled vehicles that meet the normal requirements and practices of the principal business of the covered person are not available for purchase or lease commercially on reasonable terms and conditions in any State included in a MSA/CMSA that the vehicles are operated in.

(c) *Documentation.* (1) Except as provided in paragraph (c) (2) of this section, if a covered person is seeking an exemption under paragraph (b)(1) of this section, the types of documentation that are to accompany the request include, but are not limited to, maps of vehicle operation zones and maps of locations providing alternative fuel.

(2) If a covered person seeking an exemption under paragraph (b)(1) of this section operates light duty vehicles outside of the areas listed in Appendix A of subpart A, and central fueling of those vehicles does not meet the normal requirements and practices of that person's business, then that covered person shall only be required to justify in a written request why central fueling is incompatible with its business.

(3) If a covered person is seeking an exemption under paragraph (b)(2) of this section, the types of documentation that are to accompany the request include, but are not limited to, alternative fueled vehicle purchase or lease requests, a listing of vehicles that meet the normal practices and requirements of the covered person and any other documentation that exhibits good faith efforts to acquire alternative fueled vehicles.

(d) Exemptions are granted for one model year only and may be renewed annually, if supporting documentation is provided.

(e) Exemptions may be granted in whole or in part. When granting an exemption in part, DOE may, depending upon the circumstances, completely relieve a covered person from complying with a portion of the vehicle acquisition requirements for a model year, or it may require a covered person to acquire all or some of the exempted vehicles in future model years.

(f) The Assistant Secretary shall provide to the covered person within 45 days after receipt of a request that complies with this section, a written determination as to whether the State's request has been granted or denied.

(g) If a covered person is denied an exemption, that covered person may file an appeal within 30 days of the date of determination, pursuant to 10 CFR part 1003, subpart C, with the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Ave, SW, Washington, DC 20585. The Assistant Secretary's determination shall be stayed during the pendency of an appeal under this paragraph.

§ 490.309 Annual reporting requirements.

(a) If a person is required to comply with the vehicle acquisition schedule in section 490.302 or section 490.307, that person shall file an annual report under this section, on a form obtainable from DOE, with the Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, EE–33, 1000 Independence Ave., SW., Washington, DC 20585, or such other address as DOE may publish in the Federal Register, on or before the December 31 after the close of the applicable model year.

(b) This report shall include the following information—

(1) Number of new light duty motor vehicles acquired by the covered person

in the United States during the model year;

(2) Number of new light duty alternative fueled vehicles that are required to be acquired during the model year;

(3) Number of new light duty alternative fueled vehicle acquisitions in the United States during the model year;

(4) Number of alternative fueled vehicle credits applied against acquisition requirements;

(5) For each new light duty alternative fueled vehicle acquisition—

(i) Vehicle make and model;

(ii) Model year;

(iii) Vehicle Identification Number;

(iv) Dedicated or dual-fueled (including flexible fuel); and

(v) Type of alternative fuel the vehicle is capable of operating on.

(c) If credits are applied against alternative fueled vehicle acquisition requirements, then a credit activity report, as described in subpart F, must be submitted with the report under this section to DOE.

(d) Records shall be maintained and retained for a period of three years.

§ 490.310 Violations.

Violations of this subpart are subject to investigation and enforcement under subpart G of this part.

Subpart E—[Reserved]

Subpart F—Alternative Fueled Vehicle Credit Program

§ 490.500 Purpose and Scope.

This subpart implements the statutory requirements of section 508 of the Act, which provides for the allocation of credits to fleets or covered persons who acquire alternative fueled vehicles in excess of the number they are required or obtain alternative fueled vehicles before the model year when they are first required to do so under this part.

§ 490.501 Applicability.

This subpart applies to all fleets and covered persons who are required to acquire alternative fueled vehicles by this part.

§ 490.502 Creditable actions.

A fleet or covered person becomes entitled to alternative fueled vehicle credits by—

(a) Acquiring alternative fueled vehicles, including those in excluded categories under section 490.3 of this part and those exceeding 8,500 gross vehicle weight rating, in excess of the number of alternative fueled vehicles that fleet or covered person is required to acquire in a model year when acquisition requirements apply; or

(b) Acquiring alternative fueled vehicles, including those in excluded categories under section 490.3 of this part and those exceeding 8,500 gross vehicle weight rating, in model years before the model year when that fleet or covered person is first required to acquire alternative fueled vehicles.

(c) For purposes of this subpart, a fleet or covered person that acquired a motor vehicle on or after October 24, 1992, and converted it to an alternative fueled vehicle before April 15, 1996, shall be entitled to a credit for that vehicle notwithstanding the time limit on conversions established by sections 490.202(a)(3) and 490.305(a)(3) of this part.

§ 490.503 Credit allocation.

(a) Based on annual credit activity report information, as described in section 490.507 of this part, DOE shall allocate one credit for each alternative fueled vehicle a fleet or covered person acquires that exceeds the number of alternative fueled vehicles that fleet or person is required to acquire in a model year when acquisition requirements apply.

(b) If an alternative fueled vehicle is acquired by a fleet or covered person in a model year before the first model year that fleet or person is required to acquire alternative fueled vehicles by this part, as reported in the annual credit activity report, DOE shall allocate one credit per alternative fueled vehicle for each year the alternative fueled vehicle is acquired before the model year when acquisition requirements apply.

(c) DOE shall allocate credits to fleets and covered persons under paragraph (b) of this section only for alternative fueled vehicles acquired on or after October 24, 1992.

§ 490.504 Use of alternative fueled vehicle credits.

At the request of a fleet or covered person in an annual report under this part, DOE shall treat each credit as the acquisition of an alternative fueled vehicle that the fleet or covered person is required to acquire under this part. Each credit shall count as the acquisition of one alternative fueled vehicle in the model year for which the fleet or covered person requests the credit to be applied.

§ 490.505 Credit accounts.

(a) DOE shall establish a credit account for each fleet or covered person who obtains an alternative fueled vehicle credit.

(b) DOE shall send to each fleet and covered person an annual credit account balance statement after the receipt of its credit activity report under section 490.507.

§ 490.506 Alternative fueled vehicle credit transfers.

(a) Any fleet or covered person that is required to acquire alternative fueled vehicles may transfer an alternative fueled vehicle credit to—

(1) A fleet that is required to acquire alternative fueled vehicles; or

(2) A covered person subject to the requirements of this part, if the transferor provides certification to the covered person that the credit represents a vehicle that operates solely on alternative fuel.

(b) Proof of credit transfer may be on a form provided by DOE, or otherwise in writing, and must include dated signatures of the transferor and transferee. The proof should be received by DOE within 30 days of the transfer date to the Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, EE–33, 1000 Independence Ave., SW, Washington, DC 20585 or such other address as DOE publishes in the Federal Register.

§ 490.507 Credit activity reporting requirements.

(a) A covered person or fleet applying for allocation of alternative fueled vehicle credits must submit a credit activity report by the December 31 after the close of a model year to the Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, EE–33, 1000 Independence Ave, SW, Washington, DC 20585 or other such address as DOE may publish in the Federal Register.

(b) This report must include the following information:

(1) Number of alternative fueled vehicle credits requested for:

(i) alternative fueled vehicles acquired in excess of required acquisition number; and

(ii) alternative fueled vehicles acquired in model years before the first model year the fleet or covered person is required to acquire vehicles by this part.

(2) Purchase of alternative fueled vehicle credits:

(i) Credit source; and

(ii) Date of purchase;

(3) Sale of alternative fueled vehicle credits:

(i) Credit purchaser; and

(ii) Date of sale.

Subpart G—Investigations and Enforcement

§ 490.600 Purpose and scope.

This subpart sets forth the rules applicable to investigations under titles

III, IV, V, and VI of the Act and to enforcement of section 501, 503(b), 507 or 508 of the Act, or any regulation issued under such sections.

§ 490.601 Powers of the Secretary.

For the purpose of carrying out titles III, IV, V, and VI of the Act, DOE may hold such hearings, take such testimony, sit and act at such times and places, administer such oaths, and require by subpena the attendance and testimony of such witnesses and the production of such books, papers, correspondence, memoranda, contracts, agreements, or other records as the Secretary of Transportation is authorized to do under section 505(b)(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2005(b)(1)).

§ 490.602 Special orders.

(a) DOE may require by general or special orders that any person—

(1) File, in such form as DOE may prescribe, reports or answers in writing to specific questions relating to any function of DOE under this part; and

(2) Provide DOE access to (and for the purpose of examination, the right to copy) any documentary evidence of such person which is relevant to any function of DOE under this part.

(b) File under oath any reports and answers provided under this section or as otherwise prescribed by DOE, and file such reports and answers with DOE within such reasonable time and at such place as DOE may prescribe.

§ 490.603 Prohibited acts.

It is unlawful for any person to violate any provision of section 501, 503(b), or 507 of the Act, or any regulations issued under such sections.

§ 490.604 Penalties and Fines.

(a) *Civil penalties.* Whoever violates section 490.603 of this part shall be subject to a civil penalty of not more than $5,000 for each violation.

(b) *Willful violations.* Whoever willfully violates section 490.603 of this part shall pay a criminal fine of not more than $10,000 for each violation.

(c) *Repeated violations.* Any person who knowingly and willfully violates section 490.603 of this part, after having been subjected to a civil penalty for a prior violation of section 490.603 shall pay a criminal fine of not more than $50,000 for each violation.

§ 490.605 Statement of enforcement policy.

DOE may agree not to commence an enforcement proceeding, or may agree to settle an enforcement proceeding, if the person agrees to come into compliance in a manner satisfactory to DOE. DOE normally will not commence an enforcement action against a person subject to the acquisition requirements of this part without giving that person notice of its intent to enforce 90 days before the beginning of an enforcement proceeding.

§ 490.606 Proposed assessments and orders.

DOE may issue a proposed assessment of, and order to pay, a civil penalty in a written statement setting forth supporting findings of violation of the Act or a relevant regulation of this part. The proposed assessment and order shall be served on the person named therein by certified mail, return-receipt requested, and shall become final for DOE if not timely appealed pursuant to section 490.607 of this part.

§ 490.607 Appeals.

(a) In order to exhaust administrative remedies, on or before 30 days from the date of issuance of a proposed assessment and order to pay, a person must appeal a proposed assessment and order to the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

(b) Proceedings in the Office of Hearings and Appeals shall be subject to subpart F of 10 CFR part 1003 except that—

(1) Appellant shall have the ultimate burden of persuasion;

(2) Appellant shall have right to a trial-type hearing on contested issues of fact only if the hearing officer concludes that cross examination will materially assist in determining facts in addition to evidence available in documentary form; and

(3) The Office of Hearings and Appeals may issue such orders as it may deem appropriate on all other procedural matters.

(c) The determination of the Office of Hearings and Appeals shall be final for DOE.

[FR Doc. 96–5702 Filed 3–13–96; 8:45 am]

BILLING CODE 6450–01–P

federal register

Thursday
March 14, 1996

Part III

Department of Education

34 CFR Part 99

Family Educational Rights and Privacy; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 99

RIN 1880–AA71

Family Educational Rights and Privacy

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations implementing the Family Educational Rights and Privacy Act (FERPA). The amendments are needed to implement section 249 of the Improving America's Schools Act of 1994 (IASA) (Pub. L. 103–382, enacted October 20, 1994), to eliminate unnecessary requirements and reduce regulatory burden, and to incorporate several technical changes.

DATES: Comments must be received on or before May 13, 1996.

ADDRESSES: All comments concerning these proposed regulations should be addressed to LeRoy Rooker, U.S. Department of Education, 600 Independence Avenue, SW., Room 1366, Washington, D.C. 20202–4605. Comments may also be sent through the Internet to FERPA____Comments@ed.gov.

To ensure that public comments have maximum effect in developing the final regulations, the Department urges that each comment clearly identify the specific section or sections of the regulations that the comment addresses and that comments be in the same order as the regulations.

Comments that concern information collection requirements must be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act of 1995 section of this preamble. A copy of those comments may also be sent to the Department representative named in the preceding paragraph.

FOR FURTHER INFORMATION CONTACT: Sharon Shirley, U.S. Department of Education, 600 Independence Avenue, SW., Room 1366, Washington, D.C. 20202–4605. Telephone: (202) 260–3887. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These proposed regulations have been reviewed and revised in accordance with the Department's ''Principles for Regulating,'' which were developed to ensure that the Department regulates in the most flexible, most equitable, and least burdensome way possible. These principles advance the regulatory reinvention and customer service objectives of the Administration's National Performance Review II and are essential to an effective partnership with States and localities. The Secretary proposes these regulations because he believes they are necessary to implement the law and give the greatest flexibility to local governments and schools. In addition, the regulations minimize burden while protecting parents' and students' rights.

Summary of Major Provisions

The following is a summary of the regulatory provisions the Secretary proposes as necessary to implement the statute, such as interpretations of statutory text or standards and procedures for the operation of the program. The summary does not address provisions that merely restate statutory language. The Secretary is not authorized to change statutory requirements. Commenters are requested to direct their comments to the regulatory provisions that would implement the statute.

Section 99.1 Applicability

FERPA applies to educational agencies and institutions to which funds are made available under any program which is administered by the Secretary. The proposed clarification of the terms ''educational agency'' and ''educational institution'' is necessary to indicate that FERPA does not, as a whole, apply to State educational agencies (SEAs), which provide supervision of, but no administrative control or direction of, public elementary and secondary schools. The proposed clarification of ''educational agency'' is adapted from the definition of ''local educational agency'' in 34 CFR 77.1 and is modified, in particular, to reflect that FERPA applies to certain postsecondary administrative agencies, such as those found in university systems. FERPA was amended by the IASA to require SEAs to afford parents access to their children's education records. In general, that right of access to records is the only right parents are afforded by FERPA with regard to education records maintained by SEAs.

Section 99.3 Definitions

The Secretary proposes to amend the definition of the term ''record'' in the regulations to reflect changing technology and changing modes of maintaining information. The proposed term ''computer media'' is intended to cover any manner of maintaining information that is stored through and retrieved by a computer, including information stored on CD–ROM.

Section 99.7 Annual Notification of Rights

The statute requires that educational agencies and institutions effectively inform parents and eligible students of their rights. The statute does not, however, require that educational agencies and institutions adopt a formal written student records policy. The Secretary proposes to remove the requirement in § 99.6 that educational agencies and institutions adopt a formal written student records policy. The Secretary further proposes to amend the regulations so that each educational agency and institution will be required to notify parents and eligible students not only of their basic rights under FERPA but also of how to pursue those rights at that specific agency or institution.

The current regulations require that educational agencies or institutions inform parents and eligible students of their basic rights. The current regulations also require that the procedures for pursuing those rights be set forth in a student records policy, a copy of which parents and eligible students may have upon request. However, the Secretary believes that, based on the nature of recent complaints under FERPA, parents and eligible students rarely seek access to the student records policy and thus remain uninformed of how to pursue their rights at that particular school, such as the appropriate procedure to seek access to education records. The Secretary also believes that removing the requirement for a student records policy and adding additional requirements to the annual notification of rights will lessen burden on institutions and will reduce administrative costs because only one document will be required.

The Secretary believes that implementation of Congress' mandate that students and parents be ''effectively'' notified of their rights can best be achieved by requiring additional information in the annual notification of rights. In that way, parents and eligible students would receive more effective notification of their rights and how to pursue them. The Secretary further believes that, because many of the items required by current regulations to be in a formal written student records policy are not necessary to implement the law, the removal of the requirements would give educational agencies and institutions greater flexibility. Initially, there may be an additional cost because schools will have to change their annual notifications, but this is outweighed by

the elimination of the student records policy requirement. These two changes together would reduce burden on educational agencies and institutions and would ensure that parents and eligible students are more aware of how to pursue their rights.

The Secretary would allow educational agencies and institutions up to three years to transfer from the current requirements and to implement the new requirements. In order to provide guidance to educational agencies and institutions, the Department would develop a model annual notice that meets the new requirements and will make it available upon publication of the final regulations. Also, for those agencies and institutions that choose to adopt a formal written student records policy, the Department would continue to update and make available its model student records policy.

Section 99.10 Right To Inspect and Review Education Records

Under section 444(a) of GEPA, SEAs that maintain education records are required to afford parents the right to inspect and review their children's education records. The Secretary believes that this new statutory requirement should be implemented, to the greatest extent possible, in the same manner as the current regulations for educational agencies and institutions to afford parents access to education records. Therefore, the Secretary proposes to amend the access provisions in the current regulations to set forth the new requirements for SEAs to afford parents access to education records. The Secretary proposes to apply to SEAs the same requirement that applies to educational agencies and institutions, i.e., that they provide a parent or eligible student access to education records within 45 days of receipt of a request. The Secretary requests comments regarding whether this time frame for SEAs to retrieve records and provide access to them is reasonable.

The Secretary recognizes that this statutory amendment will impose new burdens for SEAs, and seeks comments in particular from the SEAs as to how this provision can be administered without significantly impeding the duties and day-to-day operations of the SEAs. The Secretary seeks comments on how this provision can be implemented with minimal burden on SEAs while still affording parents their full statutory right of access under FERPA. Finally, the Secretary also seeks comments from the SEAs as to what types of records they maintain that are directly related to students.

Section 99.31(a)(5) Prior Consent Not Required for Disclosure to Juvenile Justice Systems

The proposed regulations implement a new statutory provision that permits, under certain circumstances, the disclosure of education records if allowed by State law and if the disclosure concerns the juvenile justice system's ability to serve, prior to adjudication, the student whose records are released. The Secretary has not proposed to define the terms ''juvenile justice system'' and ''prior to adjudication'' to give States flexibility to define these terms consistent with State law and practice. The Secretary is not aware of any advantage or need for a uniform definition.

Section 99.31(a)(9) Prior Consent Not Required for Disclosures Pursuant to Court Orders and Lawfully Issued Subpoenas

The Secretary proposes that educational agencies and institutions shall not be required to notify parents or eligible students prior to disclosures of education records pursuant to a federal grand jury subpoena or a subpoena issued for a law enforcement purpose. The Secretary also proposes a new regulatory provision regarding the disclosure of education records when an educational agency or institution initiates legal action against a parent or student.

The new regulatory provision would clarify that FERPA permits an educational agency or institution to release education records in court without a parent's or eligible student's prior written consent if the educational agency or institution is initiating legal action against the parent or student, and the agency or institution has made a reasonable effort to notify the parent or eligible student of the intent to disclose in advance. The purpose of this notification requirement is to give the parent or eligible student the opportunity to seek a protective order, if the parent or student does not want personally identifiable information disclosed to the public. This new provision will impose a minimal burden on schools; however, the cost of notification to parents is outweighed by the benefit to parents who will be notified prior to the release of their children's education records to a court.

Section 99.36 Disclosure of Information From Disciplinary Records

The statute was amended by the IASA to make explicit that FERPA does not prevent educational agencies and institutions from maintaining records related to a disciplinary action taken against a student for behavior that posed a significant risk to the student or others or from disclosing this information to school officials who have been determined to have a legitimate educational interest in the behavior of the student. These matters were implicit in the statute prior to the change.

The statutory amendment also permits the disclosure of information regarding disciplinary action to school officials in other schools that have a legitimate educational interest in the behavior of the student. The Secretary interprets the statute to allow a school official to disclose information regarding disciplinary action to school officials in schools where a student is not in attendance. The Secretary believes that officials in other schools have a legitimate educational interest in cultivating a safe school environment.

For example, if a school official knows that a student, who has been disciplined for carrying a weapon, is planning to attend a school-sponsored activity at another high school, FERPA would not prohibit the school official from notifying school officials at the other high school.

The Secretary believes this interpretation is consistent with Congress' intent. The Secretary welcomes comment on this provision. While this provision imposes a potential cost to students and parents, because education records may be released without their consent, that cost is minimal and is outweighed by the interests of others whose safety may be at stake.

Executive Order 12866

1. Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary to administer this program effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading *Paperwork Reduction Act of 1995.*

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has

determined that the benefits of the proposed regulations justify the costs.

To assist the Department in complying with specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

The potential costs and benefits of these proposed regulations are discussed elsewhere in this preamble under the following topic headings: § 99.7 Annual notification of rights; *§ 99.10 Right to inspect and review education records; § 99.31 Prior consent not required for disclosure;* and *§ 99.36 Disclosure of information from disciplinary records.*

2. Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 99.1 *To which educational agencies or institutions do these regulations apply?*) (4) Is the description of the regulations in the ''Supplementary Information'' section of this preamble helpful in understanding the regulations? How could this description be more helpful in making the regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, SW. (Room 5121 FOB–10B), Washington, D.C. 20202–2241.

Regulatory and Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are small local educational agencies (LEAs) receiving Federal funds from the Department. However, the regulations would not have a significant economic impact on the small LEAs affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure that LEAs comply with the educational privacy protection requirements in FERPA.

Paperwork Reduction Act of 1995

Sections 99.7 and 99.32 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of Information: Family Educational Rights and Privacy.

SEAs, LEAs, postsecondary institutions, and other recipients may be affected by these regulations. The Department needs and uses the information to ensure compliance with requirements in FERPA. Annual public reporting burden for this collection of information is estimated to be .25 hours per response for 28,075 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and recordkeeping burden for this collection is estimated to be 7,018.75 hours.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Wendy Taylor, Desk Officer for U.S. Department of Education.

The Department considers comments by the public on this proposed collection of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have a practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. This section highlights those issues already discussed in the preamble on which the Secretary would particularly like comment.

The Secretary has attempted to balance a desire to ensure that parents are afforded their rights under the law with a desire to be as flexible as possible in imposing requirements on educational agencies and institutions. The Secretary believes this balance can be achieved through these proposed amendments to the regulations, in particular through the changes to the annual notification of rights and the removal of the requirement to adopt a written student records policy. The Secretary requests specific comments on these proposed changes to the notice, in particular regarding the extent to which they will affect schools and parents and students.

As previously stated in the preamble, the Secretary would like comments on whether the proposed regulations regarding the requirement of SEAs to afford access to education records will create significant burden and disruption of operations on the SEAs and any suggestions as to how to minimize any such burdens or disruptions.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 1366, FOB–10B, 600 Independence Avenue, SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 99

Administrative practice and procedure, Education, Information, Privacy, Parents, Records, Reporting and recordkeeping requirements, Students.

Dated: January 11, 1996.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply)

The Secretary proposes to amend Part 99 of Title 34 of the Code of Federal Regulations as follows:

PART 99—FAMILY EDUCATIONAL RIGHTS AND PRIVACY

1. The authority citation for Part 99 continues to read as follows:

Authority: 20 U.S.C. 1232g, unless otherwise noted.

2. Section 99.1 is amended by removing paragraph (b), redesignating paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), respectively, and by revising paragraph (a) to read as follows:

§ 99.1 To which educational agencies or institutions do these regulations apply?

(a) Except as otherwise noted in § 99.10, this part applies to an educational agency or institution to which funds have been made available under any program administered by the Secretary, if—

(1) The educational institution provides educational services or instruction, or both, to students; or

(2) The educational agency provides administrative control of or direction of, or performs service functions for, public elementary or secondary schools or postsecondary institutions.

* * * * *

§ 99.2 [Amended]

3. Section 99.2 is amended by removing the number ''438'' and adding, in its place, the number ''444''.

4. Section 99.3 is amended by removing in the definition of ''Act'' the number ''438'' and adding, in its place, the number ''444'' and by revising the definitions of ''Disclosure'' and ''Record'' to read as follows:

§ 99.3 What definitions apply to these regulations?

* * * * *

Disclosure means to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records to any party, by any means, including oral, written, or electronic means.

* * * * *

Record means any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.

* * * * *

§ 99.6 [Removed and reserved]

5. Section 99.6 is removed and reserved.

6. Section 99.7 is revised to read as follows:

§ 99.7 What must an educational agency or institution include in its annual notification?

(a)(1) Each educational agency or institution shall annually notify parents of students currently in attendance, or eligible students currently in attendance, of their rights under the Act and this part.

(2) The notice must inform parents or eligible students that they have the right to—

(i) Inspect and review the student's education records;

(ii) Seek amendment of the student's education records that the parent or eligible student believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights;

(iii) Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that the Act and § 99.31 authorize disclosure without consent; and

(iv) File with the Department a complaint under §§ 99.63 and 99.64 concerning alleged failures by the educational agency or institution to comply with the requirements of the Act and this part.

(3) The notice must include the following:

(i) The procedure for exercising the right to inspect and review education records.

(ii) The procedure for—

(A) Requesting amendment of records under § 99.20;

(B) Obtaining a hearing regarding a denial of a request for amendment of records under §§ 99.21 and 99.22; and

(C) Adding a statement to the record under § 99.21.

(iii) The conditions in § 99.31 under which the educational agency or institution may disclose education records without a parent's or eligible student's prior written consent.

(iv) If the educational agency or institution has a policy of disclosing education records under § 99.31(a)(1), a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest.

(v) If the educational agency or institution has a policy of disclosing education records under § 99.31(a)(11), in accordance with § 99.37, a specification of—

(A) The types of personally identifiable information the agency or institution has designated as directory information;

(B) A parent's or eligible student's right to refuse to allow the agency or institution to designate specific types of information about the student as directory information; and

(C) The period of time which a parent or eligible student has to notify the agency or institution that he or she does not want the agency or institution to designate specific types of information about the student as directory information.

(b) An educational agency or institution may provide this notice by any means that are reasonably likely to inform the parents or eligible students of their rights.

(1) An educational agency or institution shall effectively notify parents or eligible students who are disabled.

(2) An agency or institution of elementary or secondary education shall effectively notify parents who have a primary or home language other than English.

(Authority: 20 U.S.C. 1232g(e) and (f)).

7. Section 99.10 is amended by adding in paragraphs (c) and (e) '', or SEA or its component'' following the word ''institution'' and by revising paragraphs (a), (b), and (d), and the authority citation to read as follows:

§ 99.10 What rights exist for a parent or eligible student to inspect and review education records?

(a) Except as limited under § 99.12, a parent or eligible student shall be given the opportunity to inspect and review the student's education records. This provision applies to—

(1) Any educational agency or institution; and

(2) Any State educational agency (SEA) and its components.

(i) For the purposes of subpart B of this part, an SEA and its components constitute an educational agency or institution.

(ii) An SEA and its components are subject to Subpart B of this part if the

SEA maintains education records on students who are or have been in attendance at any school of an educational agency or institution subject to the Act and this part.

(b) The educational agency or institution, or SEA or its component, shall comply with a request for access to records within a reasonable period of time, but not more than 45 days after it has received the request.

* * * * *

(d) If circumstances effectively prevent the parent or eligible student from exercising the right to inspect and review the student's education records, the educational agency or institution, or SEA or its component, shall—

(1) Provide the parent or eligible student with a copy of the records requested; or

(2) Make other arrangements for the parent or eligible student to inspect and review the requested records.

* * * * *

(Authority: 20 U.S.C. 1232g(a)(1)(A) and (B))

§ 99.12 [Amended]

8. Section 99.12 is amended by removing in paragraph (a) the commas after ''inspect'' and after ''review'' and by adding after the word ''inspect'' the word ''and'' and by revising the authority citation to read as follows:

(Authority: 20 U.S.C. 1232g(a)(1)(A), (B), (C), and (D))

§ 99.20 [Amended]

9. Section 99.20 is amended by removing in paragraph (a) the words ''or other rights''.

§ 99.21 [Amended]

10. Section 99.21 is amended by removing in paragraphs (a), (b)(1), and (b)(2) the words ''or other''.

11. Section 99.31 is amended by redesignating paragraph (a)(6)(iii) as paragraph (a)(6)(iv), by adding a new paragraph (a)(6)(iii) and by revising paragraphs (a)(5)(i) and (a)(9) and the authority citation to read as follows:

§ 99.31 Under what conditions is prior consent not required to disclose information?

(a) * * *

(5)(i) The disclosure is to State and local officials or authorities to whom this information is specifically—

(A) Allowed to be reported or disclosed pursuant to State statute adopted before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and the system's ability to effectively serve the student whose records are released; or

(B) Allowed to be reported or disclosed pursuant to State statute adopted after November 19, 1974, subject to the requirements of § 99.38.

* * * * *

(6) * * *

(iii) If this Office determines that a third party outside the educational agency or institution to whom information is disclosed under this paragraph (a)(6) violates paragraph (a)(6)(ii)(B) of this section, the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years.

* * * * *

(9)(i) The disclosure is to comply with a judicial order or lawfully issued subpoena.

(ii) The educational agency or institution may disclose information under paragraph (a)(9)(i) of this section only if the agency or institution makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance unless the disclosure is in compliance with—

(A) A Federal grand jury subpoena and the court has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed; or

(B) Any other subpoena issued for a law enforcement purpose and the court has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

(iii) If the educational agency or institution initiates legal action against a parent or student and has complied with paragraph (a)(9)(ii) of this section, it may disclose education records to the court without a court order or subpoena.

* * * * *

(Authority: 20 U.S.C. 1232g (a)(5)(A), (b)(1), (b)(2), (b)(4)(B), and (f)).

12. Section 99.32 is amended by removing the word ''or'' following paragraph (d)(3), replacing the period at the end of paragraph (d)(4) with a semicolon and adding the word ''or'' after the semicolon, adding a new paragraph (d)(5), and revising the authority citation to read as follows:

§ 99.32 What recordkeeping requirements exist concerning requests and disclosures?

* * * * *

(d) * * *

(5) A party seeking or receiving the records as directed by a Federal grand jury or other law enforcement subpoena and the issuing court has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

(Authority: 20 U.S.C. 1232g (b)(1) and (b)(4)(A))

13. Section 99.33 is amended by revising paragraphs (c) and (d) and by adding a new paragraph (e) to read as follows:

§ 99.33 What limitations apply to the redisclosure of information?

* * * * *

(c) Paragraph (a) of this section does not apply to disclosures made pursuant to court orders or lawfully issued subpoenas under § 99.31(a)(9), to disclosures of directory information under § 99.31(a)(11), or to disclosures to a parent or student under § 99.31(a)(12).

(d) Except for disclosures under § 99.31(a)(9), (11), and (12), an educational agency or institution shall inform a party to whom disclosure is made of the requirements of this section.

(e) If this Office determines that a third party improperly redisclosures personally identifiable information from education records in violation of § 99.33(a) of this section, the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years.

14. Section 99.34(a)(1)(ii) is amended by removing the word ''policy'' and adding, in its place, the words ''annual notification''.

15. Section 99.36 is amended by revising paragraph (b), adding paragraph (c) and revising the authority citation to read as follows:

§ 99.36 What conditions apply to disclosure of information in health and safety emergencies?

* * * * *

(b) Nothing in this Act or this part shall prevent an educational agency or institution from—

(1) Including in the education records of a student appropriate information concerning disciplinary action taken against the student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community;

(2) Disclosing appropriate information maintained under paragraph (b)(1) of this section to teachers and school officials within the agency or institution who the agency or institution has determined have legitimate educational interests in the behavior of the student; or

(3) Disclosing appropriate information maintained under paragraph (b)(1) of this section to teachers and school officials in other schools that have been determined to have legitimate

educational interests in the behavior of the student.

(c) Paragraphs (a) and (b) of this section will be strictly construed.

(Authority: 20 U.S.C. 1232g (b)(1)(I) and (h))

16. A new § 99.38 is added to subpart D to read as follows:

§ 99.38 What conditions apply to disclosure of information as permitted by State statute adopted after November 19, 1974 concerning the juvenile justice system?

(a) If reporting or disclosure allowed by State statute concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records are released, an educational agency or institution may disclose education records under § 99.31(a)(5)(i)(B).

(b) The officials and authorities to whom the records are disclosed shall certify in writing to the educational agency or institution that the information will not be disclosed to any other party, except as provided under State law, without the prior written consent of the parent of the student.

(Authority: 20 U.S.C. 1232g(b)(1)(J))

§ 99.63 [Amended]

17. Section 99.63 is amended by removing the word ''person'' and adding, in its place, the words ''parent or eligible student''.

[FR Doc. 96–6034 Filed 3–13–96; 8:45 am]

BILLING CODE 4000–01–P

Reader Aids

Federal Register

Vol. 61, No. 51

Thursday, March 14, 1996

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids	**202–523–5227**
Public inspection announcement line	**523–5215**

Laws

Public Laws Update Services (numbers, dates, etc.)	**523–6641**
For additional information	**523–5227**

Presidential Documents

Executive orders and proclamations	**523–5227**
The United States Government Manual	**523–5227**

Other Services

Electronic and on-line services (voice)	**523–4534**
Privacy Act Compilation	**523–3187**
TDD for the hearing impaired	**523–5229**

ELECTRONIC BULLETIN BOARD

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

FAX-ON-DEMAND

You may access our Fax-On-Demand service. You only need a fax machine and there is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available using this service. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list will be updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE AND NOT THE ACTUAL DOCUMENT. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, N.W., Suite 700. The Fax-On-Demand telephone number is: **301–713–6905**

FEDERAL REGISTER PAGES AND DATES, MARCH

7979–8204 1
8205–8466 4
8467–8850 5
8851–9088 6
9089–9320 7
9321–9588 8
9589–9898 11
9899–10268 12
10269–10446 13
10447–10670 14

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6867 8843
6868 8847
6869 8849
6870 9899
6871 10445

Executive Orders:
12131 (Amended by EO 12991) 9587
12957 (Continued by Notice of March 8, 1996) 9897
12959 (See Notice of March 8, 1996) 9897
12990 8467
12991 9587

Administrative Orders:
Memorandums:
February 29, 1996 9889
Notices:
March 8, 1996 9897
Presidential Determinations:
No. 96–10 of February 23, 1996 8463
No. 96–11 of February 23, 1996 8465
No. 96–12 of February 28, 1996 9887
No. 96–13 of March 1, 1996 9891
No. 96–14 of March 1, 1996 9893

4 CFR

28 9089

5 CFR

315 9321

7 CFR

29 9589
31 9589
32 9589
51 9589
52 9589
53 9589
54 9589
56 9589
58 9589
70 9589
160 9589
301 8205
319 8205
457 8851
1487 8207
1491 8207
1492 8207
1495 8207
2902 9901

Proposed Rules:
52 9654
916 8225
917 8225
1131 10288
1427 10289

8 CFR

242 8858

9 CFR

Proposed Rules:
1 9371
3 9371
92 .....9957, 10269
301 9655
304 9655
305 9655
306 9655
307 9655
310 8892
318 .....8892, 9655
319 8892
325 9655
381 .....8892, 9655

10 CFR

19 9901
30 9901
51 9901
52 9901
55 9901
100 10269
102 10269
109 10269
110 10269
114 10269
490 10622

Proposed Rules:
430 9958

12 CFR

366 9590

Proposed Rules:
3 9114
208 9114
225 9114
325 9114
703 8499

13 CFR

Ch. III 7979
107 7985
115 7985
120 7985
121 7986
125 7986

14 CFR

23 10269
25 9533
27 10436
29 10436
39 .....8209, 8211, 9090, 9092,

9097, 9098, 9371, 9599, 9601, 9604, 9606, 9607, 10270
71 .....8859, 9612, 10271
91.....10269
121.....9612
Proposed Rules:
39 .....8892, 8896, 8897, 9119, 9959, 9960, 10292, 10294, 10478
71 .....8899, 9655, 9656, 9657, 9658, 10296
121.....9969,

15 CFR

785.....8471
Proposed Rules:
923.....9746
926.....9746
927.....9746
928.....9746
932.....9746
933.....9746

16 CFR

Proposed Rules:
405.....8499

17 CFR

Proposed Rules:
210.....9848
228.....9848
229.....9848
230.....9848
232.....9848
239.....9848
240.....9848, 10271
249.....9848

18 CFR

154.....9613
157.....8213
201.....8860
284.....8860, 8870

19 CFR

10.....7987
113.....7987
148.....9638
Proposed Rules:
101.....8001

20 CFR

368.....8213
416.....10274

21 CFR

5 .....8214, 8472, 9639
73.....7990
101.....8752, 10280
123.....9100
136.....8781
137.....8781
139.....8781
164.....9323
172.....8797
175.....9903
180.....7990
310.....9570
332.....8836
510.....8872
520.....8872
522.....8872
524.....8872
880.....8432
890.....8432
1240.....9100
Proposed Rules:
2.....8002
54.....8502
70.....8372
73.....8372
74.....8372
80.....8372
81.....8372
82.....8372
101 ....8372, 8750, 8900, 10480
178.....8372
201.....8372
312.....8502
314.....8502
320.....8502
330.....8450, 8502
601.....8502
701.....8372
807.....8502
809.....10484
812.....8502
814.....8502
860.....8502
864.....10484
886.....9373
1300.....8503
1301.....8503
1302.....8503
1303.....8503
1304.....8503
1305.....8503
1306.....8503
1307.....8503
1308.....8503
1309.....8503
1310.....8503
1311.....8503
1312.....8503
1313.....8503
1316.....8503

22 CFR

2a.....10447
40.....9325
514.....8215

23 CFR

1313.....9101
Proposed Rules:
1210.....9120

24 CFR

5.....9040, 9536
35.....9064
92.....9036
202.....8458
243.....9536
842.....9536
880.....9040
881.....9040
882.....9040
883.....9040
884.....9040
885.....9040
886.....9040
889.....9040
904.....9040
941.....8712
942.....9536
950.....8712
955.....9052
960.....9040
962.....8814
965.....8712
968.....8712
982.....9040
983.....9040
984.....8814
1720.....10440
3282.....10440
3500.....10440
3800.....10440
Proposed Rules:
250.....8901
251.....8901
256.....8901

26 CFR

1 .....7991, 9326, 10447
20.....7991
25.....7991
31.....9639
40.....10450
42.....10450
48.....10450
602.....9336, 10450
Proposed Rules:
1 .....9377, 9659, 9660, 10489
48.....10490, 10492
301.....9660, 10492
602.....10492

28 CFR

52.....8472

29 CFR

1901.....9228
1902.....9228
1910.....9228
1915.....9228
1926.....9228
1928.....9228
1950.....9228
1951.....9228
Proposed Rules:
1910.....9381
1915.....9381
1926.....9381

30 CFR

75.....9764
Proposed Rules:
250.....8534, 8901
251.....8901
256.....8901
906.....8534
936.....8536

31 CFR

500.....9343
535.....8216
Proposed Rules:
357.....8420

32 CFR

23.....9344
216.....0346
706 .....9104, 9105, 9107, 9904
Proposed Rules:
324.....8003

33 CFR

4.....9264
Subchapter D.....10466
81.....10466
100 .....8216, 8217, 8218
117.....10466
130.....9264
131.....9264
132.....9264
137.....9264
138.....9264
165 .....8219, 8220, 9348
Proposed Rules:
100.....8227, 8229
165.....10493

34 CFR

75.....8454
345.....8158
Proposed Rules:
99.....10664

39 CFR

111.....10068

40 CFR

51.....9905
52 .....7992, 7995, 8873, 9350, 9639, 9642, 9644, 9905
60.....9905
70.....8875
80.....8221
112.....9646
114.....9646
117.....9646
152.....8876
167.....8221
180 .....9355, 10280, 10282
185.....9357
271.....9108
300.....7996
418.....10468
Proposed Rules:
52 .....8008, 8009, 8901, 9125, 9639, 9642, 9644
63.....9383, 9532
70.....9125, 9661
82.....9014
89.....9131
90.....9131
91.....9131
122.....8229
123.....8229
180 .....8174, 8901, 8903, 9399, 10297
264.....9532
265.....9532
266.....9532
300 .....8012, 9403, 10298
403.....8229
501.....8229
745.....9064

41 CFR

101–71.....9110
301.....10252
Proposed Rules:
60–741.....9532

42 CFR

57.....9532
58.....9532
Proposed Rules:
440.....9405

43 CFR

Proposed Rules:
Ch. II.....8537
14.....8538

44 CFR

61.....8222
64.....7997, 8474

65.....10468, 10472
67.....10474
Proposed Rules:
67.....10494

46 CFR

Proposed Rules:
108.....8539
110.....8539
111.....8539
112.....8539
113.....8539
161.....8539
381.....9670
501.....9944

47 CFR

0.....8475
2.....8475
5.....8475
21.....8475
22.....8475
23.....8475
25 .....8475, 9944, 9946
61.....8879
63.....10475
64.....8879
73 .....7999, 8000, 8475, 8880, 8881, 9359, 9360, 9648, 10284
76.....9361, 9648
78.....8475
80.....8475
90.....8475, 8478
94.....8475
95.....8475
97.....9953
Proposed Rules:
Ch. I.....9963, 10496
1.....9964
2.....8905
25.....8905
36.....10499
43.....10522
63.....10522
64.....9966, 10522
65.....9968
69.....10499
73 .....8014, 8230, 9410, 9411, 9964, 10300, 10301
76.....9411, 9671
87.....8905

48 CFR

206.....10285
213.....9532

49 CFR

199.....10477
382.....9546
383.....9546
390.....9546
391.....9546
392.....9546
571.....9953
671.....9650
1201.....9112
1262.....9112
Proposed Rules:
40.....9969
171.....8328
173.....8328
178.....8328
191.....9132
192.....8231, 9132
193.....8231
195.....8231, 9415
199.....9969
214.....10528
219.....9969
229.....8881
382.....9969, 10548
383.....10548
390.....10548
391.....10548
571.....9135, 10556
572.....9135
653.....9969
654.....9969
Ch. X 9413, 10526
1201.....9138
1262.....9138
1312.....9419

50 CFR

17.....9651
227.....10477
260.....9368
261.....9368
262.....9368
263.....9368
264.....9368
265.....9368
266.....9368
267.....9368
285.....8223
290.....8224
351.....9369
380.....8483
611.....9955
625.....10285, 10286
650.....8490
651.....8492
655.....8496
661.....8497
672 ....8888, 9955, 9956, 10286
675 .....8497, 9498, 8888, 8889, 9113, 9370, 10287
676.....9955
683.....8890
Proposed Rules:
17 .....8014, 8016, 8018
23.....8019
91.....10557
260.....9420
642.....10302
651.....8540
663.....8021, 10303
672.....9972
675.....8023
686.....8564

REMINDERS

The rules and proposed rules in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Public and Indian housing:

United States Housing Act of 1937; assistance; definitions and requirements; published 2-13-96

INTERIOR DEPARTMENT

Acquisition regulations:

Internal procedures; published 2-13-96

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

National Historical Publications and Records Commission; grant program procedures; published 2-13-96

TREASURY DEPARTMENT

Internal Revenue Service

Excise taxes:

Gasoline and diesel fuel registration requirements; published 3-14-96

Income taxes:

Consolidated groups--

Intercompany transactions and related rules; published 3-14-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Milk marketing orders:

Arizona; comments due by 3-20-96; published 3-13-96

Olives grown in California; comments due by 3-21-96; published 2-20-96

Onions grown in--

Texas; comments due by 3-21-96; published 2-20-96

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:

Citrus canker; comments due by 3-22-96; published 1-22-96

AGRICULTURE DEPARTMENT

Farm Service Agency

Program regulations:

Housing--

Section 515 rural rental housing loans; comments due by 3-18-96; published 1-17-96

AGRICULTURE DEPARTMENT

Rural Business and Cooperative Development Service

Program regulations:

Housing--

Section 515 rural rental housing loans; comments due by 3-18-96; published 1-17-96

AGRICULTURE DEPARTMENT

Rural Housing and Community Development Service

Program regulations:

Housing--

Section 515 rural rental housing loans; comments due by 3-18-96; published 1-17-96

AGRICULTURE DEPARTMENT

Rural Utilities Service

Program regulations:

Housing--

Section 515 rural rental housing loans; comments due by 3-18-96; published 1-17-96

AGRICULTURE DEPARTMENT

Import quotas and fees:

Dairy products; comments due by 3-18-96; published 1-18-96

COMMERCE DEPARTMENT

Freedom of Information and Privacy Acts; implementation; comments due by 3-22-96; published 2-21-96

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Gulf of Alaska and Bering Sea and Aleutian Islands groundfish; comments due by 3-21-96; published 2-20-96

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Defense Authorization Act; implementation; comments due by 3-22-96; published 2-21-96

EDUCATION DEPARTMENT

Special education and rehabilitative services:

Projects with industry program; comments due by 3-22-96; published 1-22-96

ENVIRONMENTAL PROTECTION AGENCY

Air programs; State authority delegations:

Washington; comments due by 3-18-96; published 2-16-96

Air quality implementation plans; approval and promulgation; various States:

Florida; comments due by 3-22-96; published 2-21-96

Michigan; comments due by 3-22-96; published 2-21-96

South Carolina; comments due by 3-18-96; published 2-16-96

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:

New Mexico; comments due by 3-18-96; published 2-16-96

Clean Air Act:

Acid rain program--

Nitrogen oxides emissions reduction program; comments due by 3-19-96; published 2-2-96

Hazardous waste:

Identification and listing--

Petroleum refining process wastes; land disposal restrictions; comments due by 3-21-96; published 2-13-96

State underground storage tank program approvals--

Maine; comments due by 3-22-96; published 2-21-96

Rhode Island; comments due by 3-21-96; published 2-20-96

Water pollution control:

Water quality standards--

Sacramento River, San Joaquin River, and San Francisco Bay and Delta, CA; surface waters; protection criteria; comments due by 3-19-96; published 12-20-95

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services

Common and private carrier paging, licensing procedures; competitive bidding; comments due by 3-18-96; published 2-16-96

Radio stations; table of assignments:

Arkansas; comments due by 3-21-96; published 2-6-96

Television broadcasting:

Cable television systems--

Cable home wiring; comments due by 3-18-96; published 2-16-96

Telephone and cable telecommunications inside wiring, customer premises equipment; harmonization; comments due by 3-18-96; published 2-1-96

FEDERAL DEPOSIT INSURANCE CORPORATION

General policy:

Fitness for employment; minimum standards; comments due by 3-18-96; published 2-15-96

FEDERAL EMERGENCY MANAGEMENT AGENCY

Flood insurance program:

Audit program revision; comments due by 3-18-96; published 2-1-96

GENERAL ACCOUNTING OFFICE

Bid protest process; comments due by 3-22-96; published 2-21-96

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Defense Authorization Act; implementation; comments due by 3-22-96; published 2-21-96

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food for human consumption:

Food labeling--

Nutrient content claims; general principles; comments due by 3-20-96; published 12-21-95

Nutrient content claims; general principles; correction; comments due by 3-20-96; published 3-6-96

Human subjects, protection; informed consent; comments due by 3-21-96; published 12-22-95

HEALTH AND HUMAN SERVICES DEPARTMENT

Public Health Service

Organization, functions, and authority delegations:

Senior Biomedical Research Service; comments due by 3-22-96; published 2-21-96

INTERIOR DEPARTMENT

Minerals Management Service

Royalty management:

Federal and Indian leases; oil valuation; comments due by 3-19-96; published 12-20-95

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Colorado; comments due by 3-20-96; published 3-5-96

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Defense Authorization Act; implementation; comments due by 3-22-96; published 2-21-96

PERSONNEL MANAGEMENT OFFICE

Prevailing rate systems; comments due by 3-18-96; published 2-15-96

RAILROAD RETIREMENT BOARD

Public information availability; fee schedule; comments due by 3-18-96; published 1-18-96

STATE DEPARTMENT

Removal of alien enemies brought to U.S.; World War II reparations; and disposal of surplus property in foreign areas; CFR parts removed; comments due by 3-22-96; published 2-21-96

TRANSPORTATION DEPARTMENT

Coast Guard

Federal regulatory review:

Electrical engineering requirements for merchant vessels; comments due by 3-18-96; published 2-2-96

Regattas and marine parades:

Annual National Maritime Week Tugboat Races; comments due by 3-18-96; published 1-17-96

TRANSPORTATION DEPARTMENT

Ticketless travel; passenger notices; comments due by 3-19-96; published 1-19-96

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 3-19-96; published 1-19-96

Beech; comments due by 3-22-96; published 2-9-96

Bellanca, Inc.; comments due by 3-20-96; published 1-22-96

Cessna; comments due by 3-21-96; published 1-22-96

Jetstream; comments due by 3-22-96; published 1-19-96

Class E airspace; comments due by 3-18-96; published 1-31-96

Colored Federal Airways; comments due by 3-21-96; published 2-6-96

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Meetings:

Mirror systems safety; comments due by 3-22-96; published 2-7-96

TREASURY DEPARTMENT

Internal Revenue Service

Employment taxes and collection of income taxes at source:

Backup withholding, statement mailing requirements, and due diligence; comments due by 3-20-96; published 12-21-95

Income taxes:

Family and Medical Leave Act; cafeteria plans operation; comments due by 3-20-96; published 12-21-95

Loans to plan participants; comments due by 3-20-96; published 12-21-95

Tax exempt section 501(c)(5) organizations; requirements; comments due by 3-20-96; published 12-21-95

TREASURY DEPARTMENT

Government Securities Act of 1986; large position rules financial responsibility and reporting and recordkeeping requirements amendments; comments due by 3-18-96; published 12-18-95