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Thursday
March 21, 1996

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

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Presidential Documents

Title 3—

The President

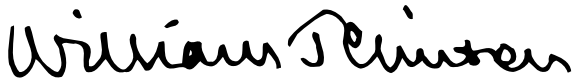
Presidential Determination No. 96–18 of March 8, 1996

Eligibility of Slovenia and the Former Yugoslav Republic of Macedonia To Be Furnished Defense Articles and Services Under the Foreign Assistance Act and the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 503(a) of the Foreign Assistance Act of 1961, as amended, and section 3(a)(1) of the Arms Export Control Act, I hereby find that the furnishing of defense articles and services to the Governments of Slovenia and the Former Yugoslav Republic of Macedonia will strengthen the security of the United States and promote world peace.

You are authorized and directed to report this finding to the Congress and to publish it in the Federal Register.



THE WHITE HOUSE,
Washington, March 8, 1996.

[FR Doc. 96–7077
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Billing code 4710–10–M

Rules and Regulations

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

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 330, 333, and 335

RIN 3206–AH25

Agency Funding for Federal Employment Information

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations requiring each agency to pay a fee for its share of the cost of providing employment information through OPM to Federal employees and the public. The regulations implement a permanent statutory provision of Public Law 104–52, which authorizes OPM to charge fees to agencies to pay the cost of providing Federal employment information and related services. The fee for FY 96 will be based on each agency's proportionate share of the Federal competitive service workforce as of March 31, 1995, including all permanent and nonpermanent employees.

EFFECTIVE DATE: March 21, 1996.

FOR FURTHER INFORMATION CONTACT: Richard Whitford on 202–606–2525, TDD 202–606–0591, or FAX 202–606–5049.

SUPPLEMENTARY INFORMATION: The Treasury, Postal Service, and General Government Appropriations Act, 1996 (Pub. L. 104–52, November 19, 1995) shifts the funding for the Federal employment information function from OPM appropriations to a combination of OPM appropriations and fees for services to be paid by agencies into OPM's revolving fund.

Employment Information

Under 5 U.S.C. 3327, agencies must notify OPM of (1) competitive examinations and (2) vacancies in the competitive service and Senior Executive Service for which the agency will consider applicants from outside the Federal service. Under 5 U.S.C. 3330, agencies must notify OPM of competitive service job announcements open to applicants outside an agency's own workforce. Under both laws, OPM is responsible for disseminating the information to the public.

Agencies also are required by the Interagency Career Transition Assistance Plan for Displaced Employees in 5 CFR part 330 (60 FR 67281, December 29, 1995) to notify OPM of competitive service vacancies open to candidates outside an agency's workforce, including temporary vacancies lasting 90 days or more. OPM makes this information available to assist displaced employees in finding employment. The Plan implemented, in part, the President's memorandum of September 12, 1995, entitled ''Career Transition Assistance for Federal Employees.''

In addition to carrying out the obligations discussed above, OPM provides employment information to support outplacement services of agency career transition centers. OPM also responds to a large volume of inquiries from the public, Federal employees, Congressional offices, and others on a broad range of employment topics.

Public Law 104–52 amended 5 U.S.C. 3330, which addresses competitive service announcements, to authorize OPM to charge fees to agencies to pay the cost of providing services under section 3330 and for related Federal employment information.

Proposed Regulations and Comments

On January 8, 1996, OPM issued proposed regulations at 61 FR 546 to implement the new funding arrangement. We proposed that fees for FY 96 be based on each agency's proportionate share of the Federal competitive service workforce as of March 31, 1995, including all permanent and nonpermanent employees. We received written comments from five agencies.

One agency disagreed with the proposal to base fees on each agency's proportionate share of competitive service employees and suggested that fees be based on the number of inquiries handled annually. The commenter believes the OPM proposal would cause smaller agencies to subsidize larger agencies that use the OPM services more frequently.

OPM believes that a fee based on employment levels is fair. Such a funding mechanism reflects the centralized recruitment benefits to an agency, employment services to its employees, and dissemination of information and responses to a high volume of inquiries to the general public that otherwise would go to individual agencies.

OPM can identify the number of inquiries handled through its employment information system but not the source of contacts nor the agencies of interest to individual job seekers. Furthermore, there is no evidence that larger agencies make relatively greater use of OPM's employment information system than smaller agencies do.

Three agencies disagreed with the use of employment levels as of March 31, 1995, and suggested, respectively, mid-September 1995, October 31, 1995, or March 31, 1996, as more appropriate for the period in which services are provided. OPM has retained March 31, 1995. If future agency fees are based on employment levels, OPM will need to notify agencies of their share by the third quarter of the fiscal year preceding the one in which the fee is due to allow for agency budget planning. Employment levels will be taken from OPM's Central Personnel Data File (CPDF). Because agencies transmit personnel actions to CPDF on a quarterly basis, the most recent available data will be as of March 31, of each year.

An official from a component of a department commented that fees based on employment levels as of March 31 would not be appropriate for his organization because in a recent reorganization a considerable number of employees were transferred to a different component. OPM will notify each agency/department headquarters of its total agency fee (unless an agency requests otherwise). How the total fee is assessed among the components will be an internal matter for each agency.

One agency recommended that assessment be waived for any agency that does not have an appropriation for the current year. While we understand the concerns of agencies under a continuing resolution, we do not believe an exemption would be equitable to

other agencies—which also may be operating under a reduced appropriation.

Another agency suggested that it be given the option of using either OPM employment information services or developing its own recruitment and outreach programs. The OPM employment information function complements individual agency recruitment programs. However, agencies do not have an option under 5 U.S. 3327 and 3330; they are required to report examinations and vacancies to OPM. Nor does OPM have an option. The law requires OPM to disseminate employment information to the public, and Congress has made clear through Public Law 104–52 that agencies are to share in the funding of that responsibility.

The Administration and Congress clearly favor a single job information system over multiple agency-based systems. Beginning with National Performance Review recommendations to the President's initiative on career transition assistance and recent amendments to title 5, U.S.C, the support for an interagency information system has been clear and consistent. Thus, as agencies undergo downsizing and restructuring, a major consideration should be the appropriateness and cost-effectiveness of developing or operating duplicative employment information systems. Agencies also should note that adjustments to personnel reductions may be eased through more effective use of the Federal Employment Information System. Agencies may take the following steps:

- Refer inquiries about vacancies and employment that can be handled by OPM's automated Governmentwide employment information system directly to it, such as requests for job announcements and application materials.
- Make a single entry of vacancies to the Federal Employment Information System instead of mailing hard copy announcements to multiple recruiting points or third-party providers, or using paid advertising.
- When entering jobs into the database, make maximum use of the ''remarks'' section of the job record to provide information and minimize job seekers' follow-up calls to the personnel office. Also, to further minimize the number of inquiries to agencies and reduce personnel office workload, OPM will provide job announcements directly to job seekers (from electronic files of job announcements agencies transmit to OPM).

OPM recognizes that not every agency is prepared at present to provide electronic files of job announcements. We plan to work with those agencies during a transition period in which we will continue to provide entry assistance. In light of the benefits that will accrue to agencies through electronic transmission, our goal is that they acquire the necessary capability and assume the data entry and vacancy announcement uploading functions by May 1, 1996.

One agency commented that the proposal removes agency flexibility to determine how best to notify State employment offices of examinations/vacancies, and that agency discretion be restored because agency funds are affected. Section 3327 of title 5, U.S.C., requires OPM to make this information available to State Employment Service offices. Since 1989, OPM has met this statutory requirement through regular electronic reports of job listings in the Federal Employment Information System to America's Job Bank, a Department of Labor funded organization that disseminates vacancy information to State Employment Service offices. Agencies need take no further action. Any attempt to delete selected agency data, as proposed, would have an adverse impact on this cost-effective approach as it now operates.

A competitive service agency suggested that excepted service agencies also be assessed for their fair share because they too benefit from the system. OPM lacks legal authority to assess excepted agencies because 5 U.S.C. 3327 and 3330 do not cover excepted positions.

Final Regulations

OPM is adopting the regulations as proposed with only minor editorial changes. The fee for FY 96 will be based on each agency's proportionate share of the Federal competitive service workforce as of March 31, 1995, including all permanent and nonpermanent employees. OPM has been appropriated $2.5 million for the employment information function in FY 96. The balance to be collected through agency fees is $2.8 million. OPM will bill at the agency headquarters level to minimize billing and accounting unless we hear otherwise from an agency.

Concerning future years, OPM will soon establish a working group of the Interagency Advisory Group, consisting of officials from representative agencies and OPM, to review the level, quality and costs of information services provided and make recommendations for improving efficiency and effectiveness. All agencies will have the opportunity, through the Interagency Advisory Group, to discuss and comment on recommendations of the working group prior to implementation.

OPM will regularly report to agencies the information it collects regarding customer satisfaction and complaints. OPM also will notify each agency annually of the costs of the services, its obligation and of payment procedures.

The final regulations also consolidate the public notice requirements for competitive service positions in parts 330, 333, and 335.

Waiver of Delay in Effective Date

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to waive the delay in effective date and make these regulations effective in less than 30 days. The statutory basis for these regulations (Pub. L. 104–52) was effective on November 19, 1995, and OPM's reduced FY 96 appropriations will not allow it to continue the employment information function without reimbursement from agencies. It would be contrary to the public interest and impracticable to delay implementation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains only to Federal agencies.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 330

Armed forces reserves, Government employees.

List of Subjects in 5 CFR Parts 333 and 335

Government employees.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending 5 CFR parts 330, 333, and 335, as follows:

PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

1. The authority citation for part 330 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954–58 Comp., p. 218.

Section 330.102 also issued under 5 U.S.C. 3327 and 3330.

Subpart B also issued under 5 U.S.C. 3315 and 8151.

Section 330.401 also issued under 5 U.S.C. 3310.

Subpart H also issued under 5 U.S.C. 8337(h) and 8457(b).

Subpart I also issued under 106 Stat. 2720, 5 U.S.C. 3301 note.

2. Section 330.102 is revised, to read as follows:

§ 330.102 Federal employment information.

(a) *Vacancies open to the public.* (1) *Notice required*—(i) Under 5 U.S.C. 3327, Federal agencies must notify OPM promptly of:

(A) Open competitive examinations;

(B) Vacancies in the competitive service to be filled under direct hire procedures or part 333 of this chapter; and

(C) Vacancies in the Senior Executive Service for which the agency seeks applications from persons outside the Federal service. Also, in accordance with § 317.501(b)(2) of this chapter, agencies must notify OPM of all Senior Executive Service vacancies to be filled by initial career appointment.

(ii) OPM will provide this information to the employment offices of the United States Employment Service.

(2) *Agencies covered.* Paragraph (a)(1) of this section applies to:

(i) The executive departments listed at 5 U.S.C. 101;

(ii) The military departments listed at 5 U.S.C. 102;

(iii) Government owned corporations in the executive branch as described at 5 U.S.C. 103;

(iv) Independent establishments in the executive branch as described at 5 U.S.C. 104, including the Nuclear Regulatory Commission; and

(v) Government Printing Office.

(b) *All other vacancies*—(1) *Notice required.* Under 5 U.S.C. 3330, OPM must maintain, and make available to the public, a list of agency vacancy announcements for positions in the competitive service. Under § 330.706 of this chapter, agencies must notify OPM promptly of competitive service vacancies to be filled for more than 90 days when the agency will accept applications from individuals outside the agency's own work force.

(2) *Agencies covered.* Except for any executive agency or unit thereof whose principal function is the conduct of foreign intelligence or counterintelligence activities, as determined by the President, paragraph (b)(1) of this section applies to:

(i) The executive departments listed at 5 U.S.C. 101;

(ii) The military departments listed at 5 U.S.C. 102;

(iii) Government corporations in the executive branch as described at 5 U.S.C. 103; and

(iv) Independent establishments in the executive branch as described at 5 U.S.C. 104.

(c) *Funding.* Under 5 U.S.C. 3330(f), OPM is authorized to charge fees to agencies for their share of the cost of providing employment information to the public and to Federal employees. OPM will work with agencies to review the effectiveness and efficiency of the Federal Employment Information System in meeting Federal agency and public needs and identify improvements to the system, consistent with the minimum level of service and statutory requirements. Subsequently, OPM will annually compute the cost of providing employment information and notify each agency of its share, along with a full accounting of the costs, and payment procedures.

PART 333—RECRUITMENT AND SELECTION FOR TEMPORARY AND TERM APPOINTMENTS OUTSIDE THE REGISTER

3. The authority citation for part 333 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302, 3327, 3330; E.O. 10577, 3 CFR 1954–58 Comp., p. 218; section 333.203 also issued under 5 U.S.C. 1104.

4. Section 333.102 is revised to read as follows:

§ 333.102 Notice of job announcements to OPM.

Under 5 U.S.C. 3327 and 3330, agencies are required to report job announcements to OPM when recruiting outside the register. This requirement is implemented through § 330.102 of this chapter.

PART 335—PROMOTION AND INTERNAL PLACEMENT

5. The authority citation for part 335 is revised to read as follows:

Authority: 5 U.S.C. 3301, 3302, 3330; E.O. 10577, 3 CFR 1957–58 Comp., p. 218.

6. Section 335.105 is revised to read as follows:

§ 335.105 Notice of job announcements to OPM.

Under 5 U.S.C. 3330, agencies are required to report job announcements to OPM for vacancies for which an agency will accept applications from outside the agency's work force. This requirement is implemented through § 330.102 of this chapter.

[FR Doc. 96–6916 Filed 3–21–96; 8:45 am]

BILLING CODE 6323–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Parts 1 and 47

Rules of Practice

AGENCY: Office of the Secretary of Agriculture, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes and the Rules of Practice Under the Perishable Agricultural Commodities Act. This final rule provides that the adjudication, under the Perishable Agricultural Commodities Act, of whether an individual is ''responsibly connected'' with a particular commission merchant, dealer, or broker will be joined with any related disciplinary proceedings against the same commission merchant, dealer, or broker; and that any adjudications of such status will be made by Administrative Law Judges of the Department of Agriculture. USDA believes that the procedures, by reducing the incidence of multiple hearings, will facilitate speedy enforcement of the PACA and will result in savings in employee time and travel expense. They will also abolish the need for AMS to employ individuals to act as presiding officers at responsibly connected proceedings. In 1994, presiding officers were paid $26,866, a large portion of which would be saved under the new regulation.

EFFECTIVE DATE: This final rule is effective April 22, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Hobbie, Assistant General Counsel, Trade Practices Division, Office of the General Counsel, USDA, Room 2446 South Building, 14th Street and Independence Avenue SW., Washington, DC 20250–1400 (202) 720–5293.

SUPPLEMENTARY INFORMATION:

Disciplinary Proceedings

Section 2 of the Perishable Agricultural Commodities Act (PACA), 7 U.S.C. 499b, proscribes as unfair various conduct on the part of commission merchants, dealers, or brokers. The PACA provides redress for such unlawful conduct in the form of suspension or revocation of required licenses, and to a limited extent, civil penalties. The Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA) enforces section 2 of the PACA, in part, through

administrative proceedings adjudicated by Administrative Law Judges.

While the PACA is the substantive law governing these administrative disciplinary proceedings, The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (Rules of Practice), at 7 CFR 1.130–1.151 provide their procedural framework. Disciplinary proceedings are instituted by filing a formal complaint with the Hearing Clerk. The respondent is given the opportunity to file an answer to the complaint. An Administrative Law Judge determines the issues and makes a decision after opportunity for a full evidentiary hearing. Both parties may request testimonial and documentary subpoenas. Any decision of the Administrative Law Judge may be appealed to the Judicial Officer, acting for the Secretary. An appeal from a decision of the Judicial Officer may be taken to the appropriate U.S. Circuit Court of Appeals.

Proceedings To Determine Responsibly Connected Status

In addition to the proscription against unfair conduct embodied in section 2, section 8(b) of the PACA (7 U.S.C. 499h(b)) forbids a licensee from employing a person who is or has been ''responsibly connected'' with a firm or person whose license has been revoked or is under suspension by the Secretary, a person who has been found to have committed any flagrant or repeated violation of section 2, or against whom there is an unpaid reparation award. Such employment violations subject the employing firm or individual to license suspension or revocation. On November 15, 1995, the PACA Amendments of 1995 were signed into law. One of those amendments, 7 U.S.C. 499h(e), provides for the sanction of civil penalties in lieu of revocation or suspension of license. The final rule reflects this amendment.

The PACA, in section 1(9) (7 U.S.C. 499a), defines ''responsibly connected'' to mean ''affiliated or connected with a commission merchant, dealer, or broker as (A) partner in a partnership, or (B) officer, director, or holder of more than 10 per centum of the outstanding stock of a corporation or association.''

Prior to 1975, the determination as to responsibly connected status was made without the benefit of an oral hearing. After the decision of the U.S. Court of Appeals for the District of Columbia in *Quinn* v. *Butz*, 510 F.2d 743 (D.C. Cir. 1975), USDA instituted a procedure governed by regulations published at 7 CFR 47.47–47.68 giving any person finally determined by the PACA Branch of AMS to have been responsibly connected to a firm subject to license revocation or suspension the opportunity for an oral hearing before a presiding officer appointed by AMS.

Currently, determinations as to whether an individual is responsibly connected to a particular commission merchant, dealer, or broker are made independently of any related disciplinary proceeding against the commission merchant, dealer, or broker. Although typically the two proceedings involve a common fact nucleus, currently no mechanism exists for joining the procedures to achieve a more efficient use of resources. In addition, in those cases where the individual requests an oral hearing, responsibly connected proceedings frequently are not concluded until the sanction in the related disciplinary proceeding has been in effect for a year or more. Thus, although an offending entity's license may have been revoked for as much as a year, those individuals responsible for the violations may nevertheless continue to be employed in the industry pending a determination of responsibly connected status.

The rules currently governing determination of responsibly connected status are set out at 7 CFR 47.47–47.68. In brief, these rules provide for a preliminary determination by the Perishable Agricultural Commodities Branch (PACA Branch), AMS, as to the status of a person who is potentially responsibly connected, notification of the preliminary determination, and an opportunity to respond and furnish evidence to the Chief, PACA Branch. If the Chief, PACA Branch, sustains the preliminary determination that the individual is responsibly connected, the individual is then entitled to file a petition with the Administrator of AMS for a review proceeding and final decision and to request an oral hearing. If an oral hearing is requested, it is held before a hearing officer appointed by the Administrator. Appeals of adverse decisions of the Administrator lie to the U.S. Circuit Courts of Appeal. In any event, no employment sanction begins to run until one of the following three conditions set forth in section 8(b) of the PACA exists: (1) the license of the firm with which the responsible connection exists has been suspended or revoked; (2) there is a finding that the firm has committed a flagrant or repeated violation of section 2 of the PACA; or (3) the firm has failed to pay a reparation award under section 7 of the PACA.

Proposed Rule

On July 3, 1995, we proposed to modify the procedures for determining responsibly connected status to accomplish two objectives: (1) to consolidate, where the possibility exists, hearings in disciplinary cases and related determinations of responsibly connected status; and (2) to provide for review by an Administrative Law Judge of the final determination of the Chief, PACA Branch, that an individual is responsibly connected. Because the issues in both the disciplinary proceedings and the responsibly connected hearings are based upon identical or closely-related facts, and because the sanctions are related, such a procedure eliminates the need for duplicative litigation. The procedure we proposed also offers the advantage of insuring that the sanctions against the licensee and the individuals responsibly connected with it will commence concurrently.

Instead of filing a petition for review with the Administrator of AMS, under the proposed procedures, the individual contesting the final determination by the Chief, PACA Branch, that he or she is responsibly connected would file a petition for review with the Office of the Hearing Clerk, and the petition would be decided by an Administrative Law Judge, after opportunity for oral hearing. Any hearing on a responsibly connected determination will be consolidated with the hearing, if any, on the disciplinary matters out of which the issue of responsibly connected status arose. Likewise, all responsibly connected hearings arising out of the relationships between more than one individual and one particular PACA licensee would be consolidated.

To illustrate by hypothetical, assume that PACA Branch, AMS, institutes a disciplinary proceeding against the Acme Produce Company, of which the officers, directors, and shareholders of greater than 10 percent of the stock consist of Able, Jones, and Smith. Under the proposal, all issues arising out of the disciplinary infractions charged against Acme and all employment sanctions arising out of the relationships between Acme on the one hand and Able, Jones, and Smith on the other hand will be consolidated for hearing to the extent that the employment sanctions originate from Acme's alleged disciplinary violations. If for any reason there is no hearing on the issues involving Acme, but Able, Jones, and Smith file petitions for review of their status as responsibly connected individuals and request hearings, those hearings will be consolidated in one proceeding before an Administrative Law Judge.

To the extent that no disciplinary proceeding has been instituted against Acme and the proposed employment

sanctions against Able, Jones and Smith arise under PACA section 8(b)(3) solely from Acme's failure to pay one or more reparation awards under PACA section 7, all hearings on petitions for review will be consolidated in one proceeding before an Administrative Law Judge. The vehicle used to achieve this consolidation will be a mandatory joinder under the Rules of Practice as amended.

USDA believes that the proposed procedures, by reducing the incidence of multiple hearings, will facilitate speedy enforcement of the PACA and will result in savings in employee time and travel expense. They will also abolish the need for AMS to employ individuals to act as presiding officers at responsibly connected proceedings. In 1994, presiding officers were paid $26,866, a large portion of which would be saved under the proposed new regulation.

Comments on the Proposed Rule

We solicited comments concerning the proposal for a 30-day comment period ending August 2, 1995. We received no comments from members of the public. However, upon thorough review of the rule as proposed, we have determined that several minor changes are appropriate in order to better reflect the intent of the proposal.

We have amended 7 CFR 1.132, Definitions, to add the definition of ''petitioner.'' This obviates any confusion with respect to the denomination of the parties to a proceeding pursuant to the PACA. The person filing a petition for review shall be called ''petitioner.''

In § 1.133(b)(2), we have clarified in the final version that the new procedures apply whenever there is an issue of responsibly connected status where, for whatever reason, a licensee is potentially subject to license suspension or revocation. Thus, the new procedures apply whether the potential license suspension or revocation stems from alleged violation of 7 U.S.C. 499b (unfair practices), 7 U.S.C. 499h(b) (employment violations), or as provided in 7 U.S.C. 499g(d) (failing to pay reparation awards).

We are also modifying language in the final version of 7 CFR 1.136 to clarify that the Chief, PACA Branch, must file the record with the hearing clerk 10 days after service of the petition for review upon the Chief, PACA Branch.

Conclusion

Based on the rationale in the proposed rule and this rulemaking document, we are adopting the provisions of the proposal as a final rule except as previously discussed in this rulemaking document and except for minor editorial changes for clarity.

Executive Order 12866 and Regulatory Flexibility Act

The Secretary has determined that this final rule would not have a significant economic impact on a substantial number of small entities. While small entities will continue to be subject to identical substantive requirements under the revised procedures, the new procedures will not result in any new burdens. The new rule merely changes the form of the hearing utilized to determine responsibly connected status.

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

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

The Paperwork Reduction Act of 1980 does not apply to this rule since the rule does not seek answers to identical questions or impose reporting or recordkeeping requirements on 10 or more persons, and the information collected is not used for general statistical purposes.

List of Subjects

7 CFR Part 1

Administrative practice and procedure, Agriculture, Antitrust, Blind, Claims, Concessions, Cooperatives, Equal access to justice, Federal buildings and facilities, Freedom of information, Lawyers, Privacy.

7 CFR Part 47

Administrative practice and procedure, Agricultural commodities, Brokers.

For the reasons set out in the preamble 7 CFR part 1 and 7 CFR chapter I are amended as follows:

PART 1—ADMINISTRATIVE REGULATIONS

1. The authority citation for part 1, Subpart H, continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 61, 87e, 149, 150gg, 162, 163, 164, 228, 268, 499o, 608c(14), 1592, 1624(b), 2151, 2621, 2714, 2908, 3812, 4610, 4815, 4910; 15 U.S.C. 1828; 16 U.S.C. 620d, 1540(f), 3373; 21 U.S.C. 104, 11, 117, 120, 122, 127, 134e, 134f, 135a, 154, 463(b), 621, 1043; 43 U.S.C. 1740; 7 CFR 2.35, 2.41.

§ 1.131 [Amended]

2. Section 1.131 is amended as follows:

a. In paragraph (a), in the listing, by adding ''1(9),'' immediately after the entry ''Perishable Agricultural Commodities Act, 1930, sections'' and immediately before ''3(c)''.

3. Section 1.132 is amended by adding, in alphabetical order, a new definition to read as follows:

§ 1.132 Definitions.

* * * * *

Petitioner means an individual who has filed a petition for review of a determination that the individual is responsibly connected to a licensee within the meaning of 7 U.S.C. 499a(9).

* * * * *

4. Section 1.133 is amended as follows:

a. In paragraph (b), by revising the paragraph heading; and

b. In paragraph (b), by redesignating paragraph (b)(2) as paragraph (b)(3), and by adding a new paragraph (b)(2), to read as follows:

§ 1.133 Institution of proceedings.

* * * * *

(b) *Filing of complaint or petition for review.* * * * (2) Any person determined by the Chief, PACA Branch, pursuant to 7 CFR 47.47–47.68 to have been responsibly connected within the meaning of 7 U.S.C. 499a(9) to a licensee who is subject or potentially subject to license suspension or revocation as the result of an alleged violation of 7 U.S.C. 499b or 499h(b) or as provided in 7 U.S.C. 499g(d) shall be entitled to institute a proceeding under this section and to have determined the facts with respect to such responsibly connected status by filing with the Hearing Clerk a petition for review of such determination.

* * * * *

5. Section 1.135 is amended as follows:

a. By revising the section heading;

b. By designating the text of current § 1.135 as paragraph (a), and by adding a heading to newly designated paragraph (a); and

c. By adding paragraph (b), to read as follows:

§ 1.135 Contents of complaint or petition for review.

(a) *Complaint.* * * *

(b) *Petition for review.* The Petition for Review of responsibly connected status

shall describe briefly and clearly the determination sought to be reviewed and shall include a brief statement of the factual and legal matters that the petitioner believes warrant the reversal of the determination.

6. Section 1.136 is amended by adding a sentence at the end of paragraph (a) to read as follows:

§ 1.136 Answer.

(a) * * * As response to a petition for review of responsibly connected status, the Chief, PACA Branch, shall within ten days after being served by the Hearing Clerk with a petition for review, file with the Hearing Clerk a certified copy of the agency record upon which the Chief, PACA Branch, made the determination that the individual was responsibly connected to a licensee under the Perishable Agricultural Commodities Act, 7 U.S.C. 499a *et seq.*, and such agency record shall become part of the record in the review proceeding.

* * * * *

7. Section 1.137 is revised to read as follows:

§ 1.137 Amendment of complaint, petition for review, or answer; joinder of related matters.

(a) *Amendment.* At any time prior to the filing of a motion for a hearing, the complaint, petition for review, answer, or response to petition for review may be amended. Thereafter, such an amendment may be made with consent of the parties, or as authorized by the Judge upon a showing of good cause.

(b) *Joinder.* The Judge shall consolidate for hearing with any proceeding alleging a violation of the Perishable Agricultural Commodities Act, 7 U.S.C. 499a *et seq.*, any petitions for review of determination of status by the Chief, PACA Branch, that individuals are responsibly connected, within the meaning of 7 U.S.C. 499a(9), to the licensee during the period of the alleged violations. In any case in which there is no pending proceeding alleging a violation of the Perishable Agricultural Commodities Act, 7 U.S.C. 499a *et seq.*, but there have been filed more than one petition for review of determination of responsible connection to the same licensee, such petitions for review shall be consolidated for hearing.

8. Section 1.141 is amended as follows:

a. By adding a new sentence after the first sentence of paragraph (a);

b. By designating the text of paragraph (e) following the heading as paragraph (e)(1), and by adding a new paragraph (e)(2), to read as follows:

§ 1.141 Procedure for hearing.

(a) * * * A petition for review shall be deemed a request for a hearing.* * * * * * * * *

(e) *Failure to appear.* (1) * * *

(2) If the petitioner in the case of a Petition for Review of a determination of responsibly connected status within the meaning of 7 U.S.C. 499a(9), having been duly notified, fails to appear at the hearing without good cause, such petitioner shall be deemed to have waived his right to a hearing and to have voluntarily withdrawn his petition for review.

* * * * *

PART 47—RULES OF PRACTICE UNDER THE PERISHABLE AGRICULTURAL COMMODITIES ACT

9. The authority citation for part 47 continues to read as follows:

Authority: 7 U.S.C. 499o; 7 CFR 2.17(a)(8)(xiii), 2.50 (a)(8)(xiii).

§ 47.47 Additional definitions.

10. Section 47.47 is revised to read as follows:

§ 47.47 Additional definitions.

The following definitions, which are in addition to those in § 47.2 (a) through (h), shall be applicable to proceedings under §§ 47.47 through 47.49.

(a) *Chief* means the Chief of the PACA Branch, or any officer or employee to whom authority has heretofore lawfully been delegated or to whom authority may hereafter lawfully be delegated by the Chief, to act in such capacity.

(b) *PACA Branch* means that PACA Branch of the Division.

(c) *Petition for review* means the document filed requesting review by an Administrative Law Judge of the Chief's determination.

§ 47.49 [Amended]

11. Section 47.49 is amended as follows:

a. In paragraphs (a), (b), and (c), the words ''Regulatory Branch'' are removed each time they occur and the words ''PACA Branch'' are added in their place.

b. Paragraph (d) is amended by removing all words appearing after ''may file'' and adding in their place the words ''with the Hearing Clerk, pursuant to § 1.130–1.151 of this title, a petition for review of the determination.''.

c. Paragraphs (e) and (f) are removed.

§ 47.50 through 47.68 [Removed]

12. Sections 47.50 through 47.68 are removed.

Done in Washington, DC, this 29th day of February 1996.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 96–6693 Filed 3–20–96; 8:45 am]

BILLING CODE 3410–01–M

Agricultural Marketing Service

7 CFR Part 54

[No. LS–95–006]

Amendment to Meats, Prepared Meats, and Meat Products (Grading, Certification and Standards)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is amending the Meats, Prepared Meats, and Meat Products (Grading, Certification and Standards) by adding definitions, changing certificate forms, removing two outdated official stamp imprints, and adding three new official stamp imprints. Program changes made to better serve our customers and improve efficiency resulted in development of the above new items, and caused the disuse of the old stamps and certificates.

EFFECTIVE DATE: April 22, 1996.

FOR FURTHER INFORMATION CONTACT: Larry R. Meadows, Chief, Meat Grading and Certification Branch, (202) 720–1246.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12778 and the Regulatory Flexibility Act

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

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to this rule or the application of its provisions.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), the Administrator of the AMS has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of the

businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

After implementation of the rule the unit cost for providing meat grading and certification services will remain at approximately $.0009 per pound. Therefore, implementation of the changes will not significantly affect the cost of providing meat grading and certification services to the meat industry. Accordingly, the Administrator of AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined by the RFA.

Paperwork Reduction Act

The action replaces two forms with new editions. However, the new forms will be completed by AMS graders will not be a burdon on the public. Therefore, under the provisions of the Paperwork Reduction Act the forms will not be reviewed by OMB.

Background

The Secretary of Agriculture is authorized under the Agricultural Marketing Act (AMA) of 1946, as amended, 7 U.S.C. 1621 *et seq.*, to provide voluntary Federal meat grading and acceptance services to facilitate the orderly marketing of meat and meat products and to enable consumers to obtain the quality of meat they desire. As program activities or industry practices change, the regulations governing such activities require updating. Since July 1990, when Title 7, Subtitle B, Chapter I, Subchapter C, Part 54, Sections 54.1–54.26 was last amended, the program revised official certificates and other documents. The two new certificates, which allow up to five program employees to charge an applicant on one document, significantly reduce preparation time, certificate usage, and documents sent to users of the service. As a result of the changes to the official certificates, new representations are included in the rule.

The program will also add a single stamp and a series of three new official stamps, which were developed to prevent repetitive motion injuries to our personnel. The program conducted a study of all aspects of the work, and consulted experts in ergonomics prior to developing the new stamps. The new stamps will allow meat graders to apply significantly fewer stamp imprints while ensuring complete grade identification within the slaughter facility. The new stamps will be used in conjunction with grade labeled bags ensuring full grade identification throughout the marketing chain. The new stamps will also reduce the amount of meat branding ink placed on carcasses. Meat branding ink on calf, veal, lamb, and in processed beef products can produce discolored spots, which detract from appearances. The new certificates and stamps are now in use.

The program will remove the following two outdated, no longer in use, official stamps: ''U.S.D.A. PRE-IDENT FEDERAL PURCHASE,'' and ''U.S.D.A. EXAMINED AS CERTIFIED.''

The program substitutes ''Certification service'' for ''Acceptance service''—in all locations—because not all work performed results in accepted products, and adds the newly-developed Quality Systems Certification and Contract Verification Programs, which are not currently defined under the regulations and require explanation. The Quality Systems Certification Program (QSCP) evaluates processes to assure that vendors produce acceptable products without evaluating end products on a fulltime basis. The Contract Verification Program evaluates contractually purchased products, and provides purchasers an evaluation of how accurately a contractor is adhering to contractual requirements. Both programs will be available on a single-use consultation-fee basis or on a retainer-fee basis for long term usage. In conjunction with the new QSCP service, the program developed a new identification mark. The program provides for the new mark to be used on advertising materials but not directly on retail packaging.

Comments

On October 13, 1995, the Agency published in the Federal Register (60FR198) a proposed rule to amend the regulations adding new stamp imprints, services, and certificate forms, and removing no longer in use stamps and certificate forms which were not being used. This proposed rule was published allowing the opportunity for public comment as a means for providing full participation in the rulemaking process. Comments on this proposed rule were requested by November 12, 1995. During the 30-day comment period, the Agency received comments from one meat industry group.

Discussion of Comments

The commenter expressed concern about stamp imprint legibility of the New stamp because of rough exterior surface fat. The Agency realizes that changing industry practices have resulted in a less desirable surface to apply a stamp imprint. However, after testing the new stamp on hundreds of thousands of carcasses, the Agency determined the new stamp applies a satisfactory imprint on surfaces that are sufficiently dry.

The commenter expressed concern over the requirement of stamp users to institute the use of grade labeled bags, and the associated costs that must be passed to the consumer [use of the new stamp and grade labeled bags is restricted to facilities with in-house fabrication capability]. The high cost of implementing use of grade labeled bags was a major concern of other companies, but all are now marketing competitive priced products. The Agency shares concern about rising cost burdening consumers; the use of the new stamp will no longer require a full roller brand, and therefore, one less employment position in the grading process. This stamp will also significantly reduce meat branding ink use, and its associated discoloration problems in processed products. Reduced salaries and benefits, combined with lessened meat branding usage cost, will offset any cost of grade labeled bags. The Agency anticipates other cost savings through undiscovered new operational efficiencies. An additional benefit of using grade labeled bags is obtained through positive grade identity through the marketing chain. However, when intact carcasses are shipped, they will continue to be fully roller branded.

List of Subjects in 7 CFR Part 54

Food grades and standards, Food labeling, Meat and meat products.

For the reasons set forth in the preamble, 7 CFR Part 54 is amended as follows:

PART 54—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

1. The authority citation for Part 54 continues to read as follows:

Authority: 7 U.S.C. 1622–1624.

2. In § 54.1, the definition ''Acceptance service'' is removed and four new definitions are added to read as follows:

§ 54.1 Meaning of words.

* * * * *

Certification service. The service established and conducted under the regulations for the determination and certification or other identification of the compliance of products with specifications.

* * * * *

Contract verification service. A program allowing institutions or other

large purchasers of commodity products to have those products compared to contractual requirements.

* * * * *

Institutional Meat Purchase Specifications. Specifications describing various meat cuts, meat products, and meat food products derived from all livestock species, commonly abbreviated ''IMPS'', and intended for use by any meat procuring activity. For labeling purposes, only product certified by the Meat Grading and Certification Branch may contain the letters ''IMPS'' on the product label.

* * * * *

Quality Systems Certification Program. A multifaceted program allowing all aspects of the livestock industry to have quality systems, or processes within quality systems, verified by AMS agent(s) to effectuate use of such quality systems to meet contractual requirements, or as a marketing tool.

* * * * *

3. In § 54.4, the words ''Acceptance service'' are removed in the third sentence and the words ''Certification service'' are added in their place, and a new sentence is added at the end of the section to read as follows:

§ 54.4 Kind of service.

* * * The Contract Verification Service, under the regulations, provides wholesale buyers of noncertified commodity products a method of determining whether procurement(s) meet contractually specified requirements. The Quality Systems Certification Program, under the regulations, provides meatpackers, processors, producers, or other businesses in the livestock and meat trade the ability to have special processes or documented quality management systems verified.

4. In § 54.14, paragraphs (a) and (b) and figures 1 and 2 are revised to read as follows:

§ 54.14 Official certificates.

(a) Agricultural Products Certificate Form LS–5–3 (Figure 1) is the official certificate for products under the regulations. The official grader shall prepare, sign, and issue an Agricultural Products Certificate Form LS–5–3 covering products for which that grader determined final specification compliance. Where weight or count is verified, the grader shall initial in the block titled ''Weights and Total Count Verified.''

(b) Applicant Charges Certificate Form LS–5–5 (Figure 2) will be used to reduce paperwork for applicants assigned multiple graders. Assigned graders will complete one Form LS–5–5. Each grader will enter their code letters and signature in the appropriate location(s) to indicate certificate completion.

BILLING CODE 3410–02–P

U.S. DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

AGRICULTURAL PRODUCTS CERTIFICATE

This certificate is receivable by all officers and all courts of the United States as prima facie evidence of the truth of the statements therein contained.

(This certificate does not excuse failure to comply with any of the regulatory laws enforced by the U.S. Department of Agriculture).

CERTIFICATE NUMBER: A-0011913-1

EQC. CODE

WEEK BEGINNING DATE: CY | MONTH | DAY

APPLICANT INFORMATION: NO. 44 | COMMITMENT ☐ NONCOMMITMENT ☐ | (NAME, CITY, STATE)

DESCRIPTION OF PRODUCT (☐ ACCEPTED ☐ REJECTED ☐ OTHER)	CODE	CONTRACT NUMBER	SPECIFICATION	LOT	UNITS	WEIGHT	NOTICE TO DELIVER NUMBER	PATTY OR SLICE COUNT	PRODUCTION DATE	SHIPPING DATE	LABORATORY RESULTS: ORIGINAL	RESERVE	DATE RESERVE MAILED	DATE VENDOR NOTIFIED	RECEIVER, BUYER, OR TERMINAL

REMARKS:

CHARGES		SUNDAY GRAD	SUNDAY CERT	MONDAY GRAD	MONDAY CERT	TUESDAY GRAD	TUESDAY CERT	WEDNESDAY GRAD	WEDNESDAY CERT	THURSDAY GRAD	THURSDAY CERT	FRIDAY GRAD	FRIDAY CERT	SATURDAY GRAD	SATURDAY CERT	TOTAL GRAD	TOTAL CERT
BASE	L1																
PREMIUM	L2																
HOLIDAY	L3																
LABORATORY FEE	L4	$		$		$		$		$		$		$		$	
PER DIEM	L6	$		$		$		$		$		$		$		$	
MILES	L7																
TOTAL OTHER	Z7	$		$		$		$		$		$		$		$	

CERTIFICATION STATEMENT

I CERTIFY that in compliance with the Federal Meat Grading Regulations (7 CFR Part 54, Subpart A, as amended) under the Agricultural Marketing Act of 1946, as amended. (7 U.S.C. 1621-1627), I examined the product or products described above at the time and place stated, and found that at said time and place the class, grade, and other quality thereof were as stated above and such product or products complied with any specifications listed, with any qualifications noted above.

The conduct of all services and activities, and the licensing of grading personnel under the regulations governing such services shall be conducted on a nondiscriminatory basis without regard to race, color, religion, national origin, age, sex, marital status, or disability.

SIGNATURE OF GRADER

WEIGHTS AND TOTAL COUNT VERIFIED *(initial)*

LS-5-3 (1-93) *Previous editions are to be destroyed.*

Figure 1. Agricultural products certificate.

Figure 2. Applicant charges.

U. S. DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

APPLICANT CHARGES

This certificate is receivable by all officers and all courts of the United States as prima facie evidence of the truth of the statements therein contained. (This certificate does not excuse failure to comply with any of the regulatory laws enforced by the U.S. Department of Agriculture.)
The conduct of all services and the licensing of grading personnel under the regulations governing such services shall be accomplished without discrimination as to race, color, religion, sex, or national origin.

WEEK BEGINNING DATE			DOCUMENT NO:
CY	MONTH	DAY	C-0012007-1

APPLICANT INFORMATION NO. 4 4

NAME, CITY, STATE

	SUNDAY		MONDAY		TUESDAY		WEDNESDAY		THURSDAY		FRIDAY		SATURDAY		TOTAL	
1	GRAD	CERT	GRAD	CERT	GRAD	CERT	GRAD	CERT	GRAD	CERT	GRAD	CERT	GRAD	CERT	GRAD	CERT
BASE																
PREMIUM																
HOLIDAY																
LAB FEE	$		$		$				$		$		$		$	
PER DIEM	$		$		$				$		$		$		$	
MILES																
TOTAL OTHER	$		$		$		$		$		$		$		$	
GRADERS EQUIPMENT CODE					☐ COMMITMENT		☐ NONCOMMITMENT				SIGNATURE					
2																
BASE																
PREMIUM																
HOLIDAY																
LAB FEE	$		$		$		$		$		$		$		$	
PER DIEM	$		$		$		$		$		$		$		$	
MILES																
TOTAL OTHER	$		$		$		$		$		$		$		$	
GRADERS EQUIPMENT CODE					☐ COMMITMENT		☐ NONCOMMITMENT				SIGNATURE					
3																
BASE																
PREMIUM																
HOLIDAY																
LAB FEE	$		$		$		$		$		$		$		$	
PER DIEM	$		$		$		$		$		$		$		$	
MILES																
TOTAL OTHER	$		$		$		$		$		$		$		$	
GRADERS EQUIPMENT CODE					☐ COMMITMENT		☐ NONCOMMITMENT				SIGNATURE					
4																
BASE																
PREMIUM																
HOLIDAY																
LAB FEE	$		$		$		$		$		$		$		$	
PER DIEM	$		$		$		$		$		$		$		$	
MILES																
TOTAL OTHER	$		$		$		$		$		$		$		$	
GRADERS EQUIPMENT CODE					☐ COMMITMENT		☐ NONCOMMITMENT				SIGNATURE					
5																
BASE																
PREMIUM																
HOLIDAY																
LAB FEE	$		$		$		$		$		$		$		$	
PER DIEM	$		$		$		$		$		$		$		$	
MILES																
TOTAL OTHER	$		$		$		$		$		$		$		$	
GRADERS EQUIPMENT CODE					☐ COMMITMENT		☐ NONCOMMITMENT				SIGNATURE					

LS 5-5 (02-93)

10.

* * * * *

5. § 54.17 is amended by:

(1) revising the text in paragraph (b),

(2) revising paragraph (c),

(3) revising paragraph (d),

(4) revising paragraph (e),

(5) revising paragraph (f),

(6) revising paragraph (g), and

(7) adding new paragraphs (h), (i), (j), and (k) to read as follows:

§ 54.17 Official identifications.

* * * * *

(b) A shield enclosing the letters ''USDA'' as shown in Figure 1 with the appropriate quality grade designation ''Prime,'' ''Choice,'' ''Select,'' ''Good,'' ''Standard,'' ''Commercial,'' ''Utility,'' ''Cutter,'' ''Canner,'' or ''Cull,'' as provided in the official United States Standards for Grades of Beef, Veal and Calf, Lamb, Yearling Mutton, and Mutton Carcasses and accompanied by the class designation ''Bullock,'' ''Veal,'' ''Calf,'' ''Lamb,'' ''Yearling Mutton,'' or ''Mutton,'' constitutes a form of official identification under the regulations to show the quality grade, and where necessary the class, undersaid standards, of steer, heifer, and cow beef, veal, calf, lamb, yearling mutton and mutton. The code identification letters of the grader performing the service will appear intermittently outside the shield.

* * * * *

(c) A shield enclosing the letters ''USDA'' and the words ''Yield Grade,'' as in Figure 1, with the appropriate yield grade designation ''1,'' ''2,'' ''3'', ''4,'' or ''5'' as provided in the Official United States Standards for Grades of Fresh Beef Carcasses and the Official United States Standards for Grades of Lamb, Yearling Mutton, and Mutton Carcasses constitutes a form of official identification under the regulations to show the yield grade under said standards. When yield graded, bull and bullock carcasses will be identified with the class designation ''Bull'' and ''Bullock,'' respectively. The code identification letters of the grader performing the service will appear outside the shield.

BILLING CODE 3410–02–M

Figure 1.

BILLING CODE 3410–02–C

(d) Under the regulations, for carcass grade identification purposes only, a shield enclosing the letters ''USDA'' with the appropriate yield grade designation number of ''1,'' ''2,'' ''3,'' ''4,'' or ''5'' between the ''US'' and ''DA'', with the appropriate quality grade designation of ''Prime'', ''Choice,'' or ''Select,'' below both as shown in Figure 1. The code identification letters for the grader performing the service will appear outside underneath the shield.

BILLING CODE 3410–02–M

Figure 1.

BILLING CODE 3410–02–C

(e) Under the regulations, for yield grade identification purposes only, a shield enclosing the letters ''US'' on one side and ''DA'' on the other, with the appropriate Yield Grade designation number ''1,'' ''2,'' ''3,'' ''4,'' or ''5'' as shown in Figure 1. The code identification letters for the grader performing the service will appear outside underneath the shield.

BILLING CODE 3410–02–M

Figure 1.

BILLING CODE 3410–02–C

(f) Under the regulations, for quality grade identification only, a shield enclosing the letters ''US'' on one side and ''DA'' on the other with the appropriate Quality Grade designation of ''Prime,'' ''Choice,'' or ''Select'' as shown in Figure 1. The code identification letters for the grader performing the service will appear outside underneath the shield.

BILLING CODE 3410–02–M

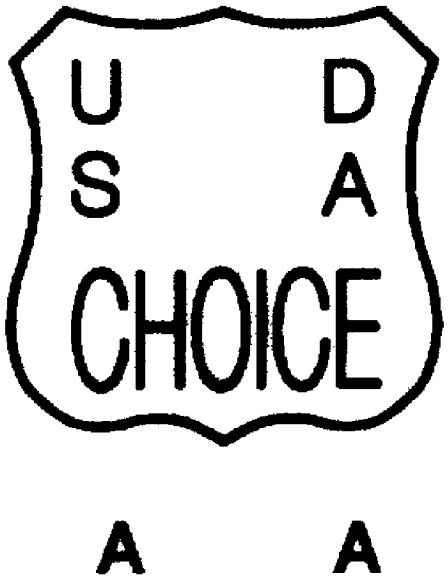


Figure 1.

BILLING CODE 3410–02–C

(g) The letters ''USDA'' with the appropriate grade designation ''1,'' ''2,'' ''3,'' ''4,'' ''Utility,'' or ''Cull'' enclosed in a shield as shown in Figure 1, as provided in the Official United States Standards for Grades of Pork Carcasses, constitutes a form of official identification under the regulations to show the grade under said standards of barrow, gilt, and sow pork carcasses.

BILLING CODE 3410–02–M

Figure 1.

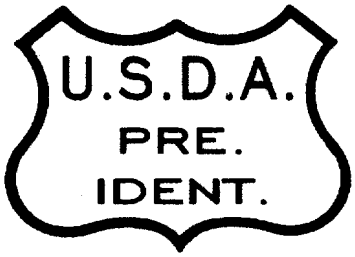
BILLING CODE 3410–02–C

(h) The following constitute forms of official identification under the regulations to show compliance of products:

BILLING CODE 3410–02–M

Figure 1.

Figure 2.



BILLING CODE 3410–02–C

Note: The letters ''RWX'', and ''UF'' shown in figures 1, and 2 are examples, respectively, of the code identification letters of the official grader performing the service.

(i) The following, as shown in Figure 1, constitutes official identification to show quality system certification:

BILLING CODE 3410–02–M

Figure 1.

BILLING CODE 3410–02–C

(j) A shield-shaped ear tag enclosing the letters ''USDA'', the words ''Carcass Data Service,'' as shown below (Figure 1), and a serial number constitutes a form of official identification under the regulations for livestock and carcasses. Other information may appear on the backside of the ear tag at the option of the purchasers.

BILLING CODE 3410–02–M

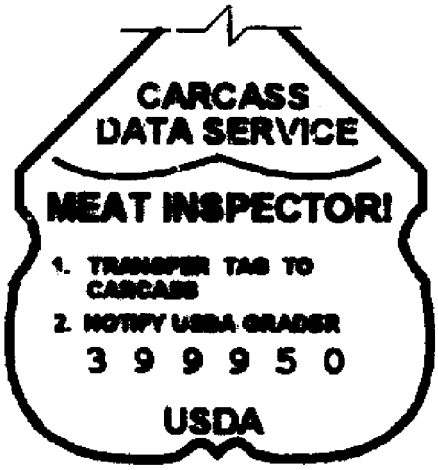


Figure 1.

BILLING CODE 3410–02–C

(k)(1) One device used by USDA graders is a rectangular, serially numbered, orange tag on which a shield encloses the letters ''USDA'' and the words ''Product Control'' as shown in Figure 1, constitutes a form of official identification under the regulations for meat and meat products.

BILLING CODE 3410–02–M

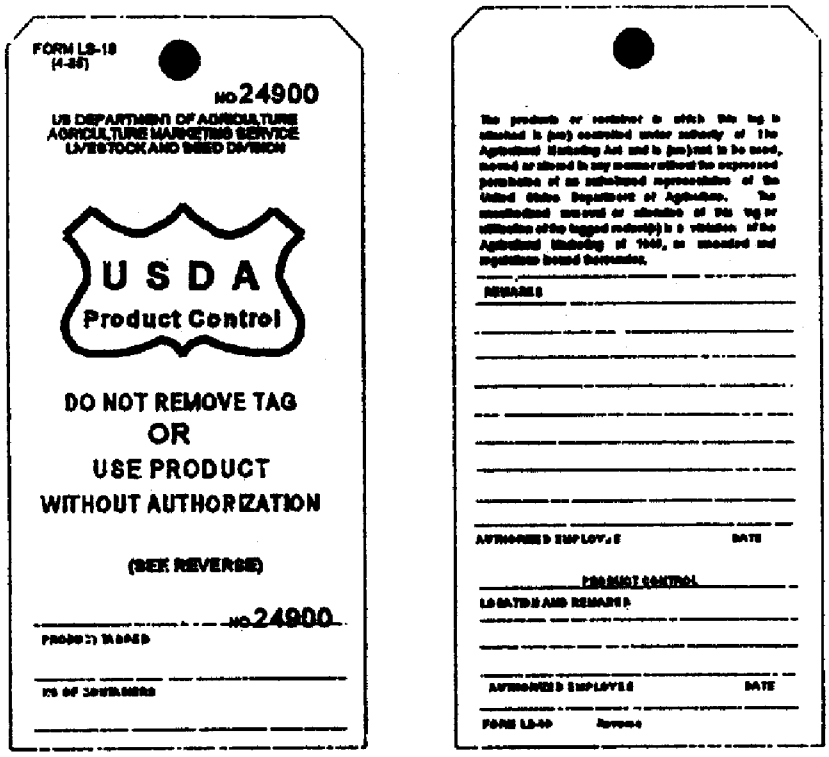


Figure 1. Form LS-10. USDA Product Control.

BILLING CODE 3410–02–C

(2) Official graders and supervisors of grading may use ''Product Control'' tags or other methods and devices as approved by the Administrator for the identification and control of meat and meat products which are not in compliance with the regulations or are held pending the results of an examination. Any such meat or meat product so identified shall not be used, moved, or altered in any manner; nor shall official control identification be removed, without the express permission of an authorized representative of the USDA.

Dated: February 21, 1996.

Lon Hatamiya,

Administrator.

[FR Doc. 96–6645 Filed 3–20–96; 8:45 am]

BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Part 1421

RIN 0560–AE28

Extension of Maturing 1994 and Subsequent Crop Year Wheat and Feed Grain Price Support Loans

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule adopts, without change, the proposed rule published in the Federal Register at 60 FR 55807 on November 3, 1995, allowing producers to extend maturing wheat, corn, grain sorghum, barley, oat, and rye price support loans during times of abnormal marketing conditions.

EFFECTIVE DATE: March 21, 1996.

FOR FURTHER INFORMATION CONTACT: Margaret Wright, Program Specialist, Farm Service Agency (FSA), USDA, room 3627, South Building, P.O. Box 2415, Washington, DC 20013–2415, telephone 202–720–8481.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Federal Assistance Program

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

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12778

This final rule has been reviewed pursuant to Executive Order 12778. To the extent State and local laws are in conflict with these regulatory provisions, it is the intent of CCC that the terms of the regulations prevail. The provisions of this final rule are not retroactive. Prior to any judicial action in a court of competent jurisdiction, administrative review under 7 CFR part 780 must be exhausted.

Paperwork Reduction Act

The amendments to 7 CFR part 1421 set forth in this final rule do not contain additional information collections that require clearance by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35. Existing information collections were approved by OMB and assigned OMB Control Numbers 0560–0087 and 0560–0129.

Public Comments

No comments were received in response to the proposed rule published on November 3, 1995, at 60 FR 55807.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs/agriculture, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Soybeans, Surety bonds, Warehouses. Accordingly, the proposed rule which amended 7 CFR part 1421 published at 60 FR 55807 on November 3, 1995, is adopted as a final rule without change as follows:

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

1. The authority citation for 7 CFR part 1421 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1441z, 1444f-1, 1445b-3a, 1445c-3, 1445e, and 1446f; 15 U.S.C. 714b and 714c. Subpart—Rice Marketing Certificate Program is also issued under authority of 7 U.S.C. 1441–2; 15 U.S.C. 714b and 714c.

2. Section 1421.6 is amended by revising paragraph (e) to read as follows:

§ 1421.6 Maturity and expiration dates.

* * * * *

(e) Notwithstanding any other provision of this section, CCC may allow producers with wheat, corn, grain sorghum, barley, oat, and rye loans maturing during times of abnormal marketing conditions, as determined by CCC, to extend such loans beyond the maturity date specified in paragraph (a) of this section. If CCC determines that the commodity pledged as collateral for such loans cannot be marketed because of such abnormal marketing conditions, CCC may authorize such loans to be extended to a date that will allow affected producers to market such commodity in a normal manner.

Signed in Washington, DC, on March 13, 1996.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 96–6774 Filed 3–20–96; 8:45 am]

BILLING CODE 3410–05–P

Animal and Plant Health Inspection Service

9 CFR Parts 82, 145, and 147

[Docket No. 94–091–2]

National Poultry Improvement Plan and Auxiliary Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the National Poultry Improvement Plan (the Plan) and its auxiliary provisions by providing new or modified administrative and testing procedures for Plan participants and participating flocks. These changes, which were voted on and approved by the voting delegates at the Plan's 1992 and 1994 National Plan Conferences, will keep the provisions of the Plan current with changes in the poultry industry, reduce paperwork requirements for some Plan participants, establish new program classifications, and allow the use of new sampling and laboratory procedures.

EFFECTIVE DATE: April 22, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew R. Rhorer, Senior Coordinator, Poultry Improvement Staff, National Poultry Improvement Plan, Veterinary Services, APHIS, USDA, 1500 Klondike Road, Suite A–102, Conyer, GA 30207; (404) 922–3496.

SUPPLEMENTARY INFORMATION:

Background

The National Poultry Improvement Plan (referred to below as ''the Plan'') is a cooperative Federal-State-industry mechanism for controlling certain poultry diseases. The Plan consists of a variety of programs intended to prevent and control egg-transmitted, hatchery-disseminated poultry diseases. Participation in all Plan programs is voluntary, but flocks, hatcheries, and dealers must qualify as ''U.S. Pullorum-Typhoid Clean'' before participating in any other Plan program. Also, the regulations in 9 CFR part 82, subpart B, which provide for certain testing, restrictions on movement, and other restriction on certain chickens, eggs, and other articles due to the presence of *Salmonella enteritidis*, require that no hatching eggs or newly hatched chicks from egg-type chicken breeding flocks may be moved interstate unless they are classified ''U.S. Sanitation Monitored'' under the Plan or they meet the requirements of a State classification plan that the Administrator of the Animal and Plant Health Inspection Service (APHIS) has determined to be equivalent to the Plan, in accordance with 9 CFR 145.23(d).

The Plan identifies States, flocks, hatcheries, and dealers that meet certain disease control standards specified in the Plan's various programs. As a result, customers can buy poultry that has tested clean of certain diseases or that has been produced under disease-prevention conditions.

The regulations in 9 CFR parts 145 and 147 (referred to below as the regulations) contain the provisions of the Plan. APHIS amends these provisions from time to time to incorporate new scientific information and technologies into the Plan.

On July 7, 1995, we published in the Federal Register (60 FR 35343–35353, Docket No. 94–091–1) a proposal to amend the regulations to:

1. Require the ratio of male to female birds in representative samples taken from certain flocks for pullorum-typhoid testing to reflect the ratio of male to female birds in the flock from which the sample was taken;

2. Alter the number of birds serologically monitored for *Mycoplasma gallisepticum* and *M. synoviae* in egg-type and meat-type chicken breeding flocks;

3. Allow the use of a federally licensed enzyme-linked immunosorbent assay (ELISA) test for the serological screening of egg-type chickens in the ''U.S. S. Enteritidis Monitored'' program;

4. Allow the use of fishmeal as an animal protein source for meat-type breeding chickens and turkey breeding flocks;

5. Establish a new ''U.S. S. Enteritidis Clean'' classification for primary meat-type chicken breeding flocks;

6. Establish a new ''U.S. M. Synoviae Clean State'' classification for turkeys;

7. Provide alternative reporting methods for participating waterfowl, exhibition poultry, and game bird flocks;

8. Establish a maximum number of positive samples for *Mycoplasma gallisepticum* or *M. synoviae* to be examined using the hemagglutination inhibition (HI) and/or serum plate dilution (SPD) tests;

9. Allow the use of a colony lift assay as a supplemental screening test to aid in the detection of group D salmonella suspect colonies on selective and non-selective agar culture plates;

10. Establish new procedures for collecting environmental samples and cloacal swabs from egg-type and meat-type chicken flocks and waterfowl, exhibition poultry, and game bird flocks for bacteriological examination;

11. Provide a laboratory protocol for the bacteriological examination of baby chicks from egg-type and meat-type chicken flocks and waterfowl, exhibition poultry, and game bird flocks; and

12. Modify the composition of the Plan's General Conference Committee.

We also proposed to amend several other sections of the regulations to reflect the proposed changes discussed above or to reflect a change made in a previously published final rule.

We solicited comments concerning our proposal for 60 days ending September 5, 1995. We received three comments by that date. They were from a State agriculture department, a college of veterinary medicine, and a State egg quality assurance program. We carefully considered all of the comments we received. They are discussed below.

One commenter pointed out that laboratory procedure for the bacteriological examination of cull chicks should have specified that the 25 randomly selected 1- to 5-day-old chicks must be chicks that have not been housed with any other poultry. The commenter correctly noted that the ''have not been housed'' provision was part of the laboratory procedure that was approved by the voting delegates at the Plan's 1994 National Plan Conference. We agree with the commenter and acknowledge that the words in question were inadvertently omitted from the text of the proposed rule. We have, therefore, added the words ''that have not been placed in a brooding house'' to paragraph (a) of new § 147.17.

Another commenter fully supported several specific aspects of the proposed rule, including the addition of § 147.17, the laboratory procedure recommended for the bacteriological examination of cull chicks for salmonella. The commenter particularly applauded the inclusion of the bursa of Fabricius in the organ pool for such examinations, and recommended that the other testing protocols in part 147 be amended to include the bursa of Fabricius in any organ pools collected for examination. Because the commenter's suggested amendments were not within the scope of the proposed rule, we cannot make such changes in this final rule. However, the commenter's recommendation will be forwarded to the Plan's General Conference Committee for consideration and could be included in a future rulemaking.

The third commenter was concerned about the use of the word ''clean'' in the ''U.S. S. Enteritidis Clean'' classification. Specifically, he stated that the word ''clean'' in the classification would lead one to believe that a flock classified as such is negative for *Salmonella enteritidis* serotype Enteritidis (SE), but the testing procedures within the classification allow a flock with an SE-positive environment and one SE-positive bird from a 25-bird sample to still be eligible for ''clean'' status if no SE was recovered from a second 25-bird sample. To the commenter, the SE-positive environment and bird were indicative of at least low levels of SE infection in the flock, even if no SE was recovered from a second 25-bird sample. The commenter concluded that the classification of a flock from which SE has been isolated from an environmental sample or in which one bird has been found to be SE-positive as ''U.S. S. Enteritidis Clean'' is misleading and could result in the spread of SE through infected chicks.

As we stated in the proposed rule, the introductory text of § 145.33(h) provides that the ''U.S. S. Enteritidis Clean'' classification is intended for primary meat-type breeders who wish to assure their customers that the chicks produced are certified free of SE; the ''clean'' designation does not mean that the entire flock has been conclusively shown to be negative for SE. The regulations in § 145.33(h) require that environmental samples be collected once the flock reaches 4 months of age, then every 30 days thereafter. If SE is isolated from an environmental sample, 25 randomly selected birds from the flock must be bacteriologically examined for SE. If only one of the 25 birds is found positive for SE, there is the possibility that there was some cross-contamination in the laboratory that conducted the tests. For that reason, we included the provision that allows the Plan participant to request the bacteriological examination of a second 25-bird sample if only one bird from the first sample was SE-positive. The testing of a 25-bird sample is not the only action that must be taken after SE is isolated in an environmental sample, however; the regulations also require that blood samples from 300 birds be officially tested with pullorum antigen every 30 days with no positive samples found. We believe that this monthly serologic testing of at least 300 birds will be sufficient to detect the low levels of SE infection that the commenter feared might remain undetected through the testing of 25 or 50 birds, so we have made no change in this final rule based on that comment.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule, with the changes discussed in this document and other minor changes for clarity and consistency and to correct typographical errors.

Executive Order 12866 and Regulatory Flexibility Act

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

The changes contained in this document are based on the recommendations of representatives of member States, hatcheries, dealers, flockowners, and breeders who took part in the Plan's 30th and 31st Biennial Conferences. The changes will keep the provisions of the Plan current with changes in the poultry industry, reduce paperwork requirements for some Plan participants, establish new program classifications, and allow the use of new sampling and laboratory procedures.

The Plan serves as a ''seal of approval'' for egg and poultry producers in the sense that tests and procedures recommended by the Plan are considered optimal for the industry. Several of the recommendations in this rule, such as the serological sampling of male meat-type birds for pullorum-typhoid and the use of fishmeal as a protein source, are already practiced by the industry. Other changes, such as the addition of a laboratory protocol for the bacteriological examination of baby chicks, provide guidelines for practices that may not currently be in use but are recognized as being potentially beneficial for the industry. In all cases, the changes have been generated by the industry itself with the goal of reducing disease risk and increasing product marketability.

Because participation in the Plan is voluntary, individuals are likely to remain in the program as long as the costs of implementing the program are lower than the added benefits they receive from the program.

The only change in this document that will entail additional costs for some producers is the creation of the ''U.S. S. Enteritidis Clean'' classification for primary meat-type chicken breeding flocks. However, we expect that any additional costs associated with the new classification will be slight in comparison to the expected increase in U.S. poultry exports, particularly to countries that require strict Salmonella enteritidis testing of poultry.

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

Executive Order 12372

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

Executive Order 12778

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

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0007.

List of Subjects

9 CFR Part 82

Animal diseases, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

9 CFR Parts 145 and 147

Animal diseases, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR parts 82, 145, and 147 are amended as follows:

PART 82—EXOTIC NEWCASTLE DISEASE IN ALL BIRDS AND POULTRY: PSITTACOSIS AND ORNITHOSIS IN POULTRY: POULTRY DISEASE CAUSED BY SALMONELLA ENTERITIDIS SEROTYPE ENTERITIDIS

1. The authority citation for part 82 is revised to read as follows:

Authority: 21 U.S.C. 111–113, 115, 117, 120, 123–126, 134a, 134b, and 134f; 7 CFR 2.18, 2.22, 2.53, 2.80, and 371.2(d).

§ 82.30 [Amended]

2. In § 82.30, in the definition of *certified Salmonella enteritidis serotype enteritidis tested free flocks*, the words ''Sanitation Monitored'' are removed and the words ''S. Enteritidis Monitored'' added in their place.

§ 82.34 [Amended]

3. In § 82.34, the words ''Sanitation Monitored'' are removed and the words ''S. Enteritidis Monitored'' added in their place.

PART 145—NATIONAL POULTRY IMPROVEMENT PLAN

4. The authority citation for part 145 continues to read as follows:

Authority: 7 U.S.C. 429; 7 CFR 2.22, 2.80, and 371.2(d).

5. In § 145.10, paragraphs (g) and (h) are revised and new paragraphs (m) and (n) are added to read as follows:

§ 145.10 Terminology and classification; flocks, products, and States.

* * * * *

(g) *U.S. Pullorum-Typhoid Clean State.* (See § 145.24(a), § 145.34(a), § 145.44(a), and § 145.54(a).)

BILLING CODE 3410–34–P

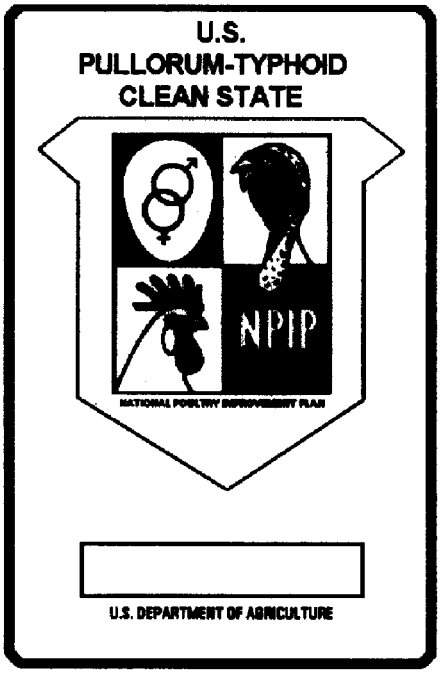


Figure 8

BILLING CODE 3410–34–C

(h) *U.S. Pullorum-Typhoid Clean State, Turkeys.* (See § 145.44(b).)

BILLING CODE 3410–34–P

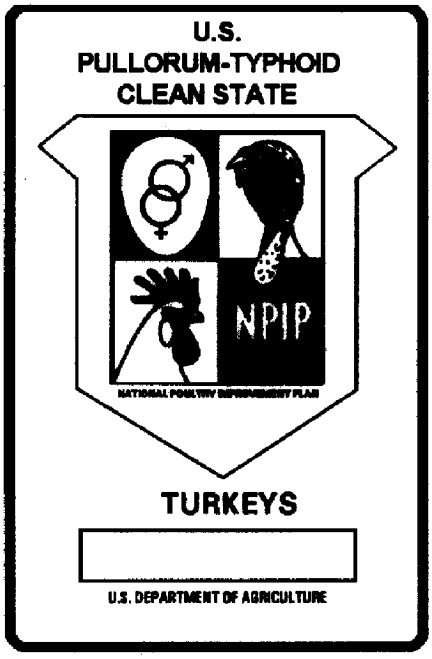


Figure 9

BILLING CODE 3410–34–C

* * * * *

(m) *U.S. S. Enteritidis Clean.* (See § 145.33(h).)

BILLING CODE 3410–34–P

Figure 14

BILLING CODE 3410–34–C

(n) *U.S. M. Synoviae Clean State, Turkeys.* (See § 145.44(d).)

BILLING CODE 3410–34–P

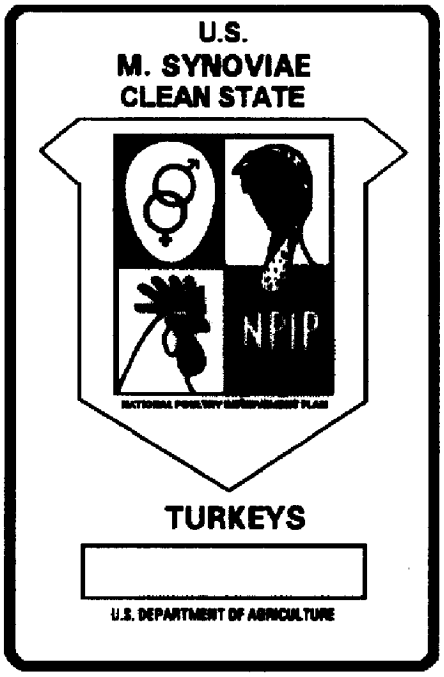


Figure 15

BILLING CODE 3410–34–C

6. Section 145.14 is amended by revising the introductory text immediately after the third sentence (which ends with the words ''in the house'') to read as follows:

§ 145.14 Blood testing.

* * * The ratio of male to female birds in representative samples of birds from meat-type chicken, waterfowl,

exhibition poultry, and game bird flocks must be the same as the ratio of male to female birds in the flock. In houses containing fewer than 30 birds, all birds in the house must be tested.

* * * * *

7. Section 145.23 is amended as follows:

a. Paragraph (c)(1)(i) is amended by removing the words ''with the approval of the Official State Agency and the concurrence of the Service, provided that a minimum'' and adding the words ''if all pens are equally represented and a total'' in their place.

b. Paragraph (c)(1)(ii)(A) is revised to read as set forth below.

c. In paragraph (d)(1)(vii), the first sentence is revised to read as set forth below.

d. Paragraph (e)(1)(i) is amended by removing the words '', with the approval of the Official State Agency and the concurrence of the Service, provided that a minimum'' and adding the words ''if all pens are equally represented and a total'' in their place.

e. Paragraph (e)(1)(ii)(A) is revised to read as set forth below.

§ 145.23 Terminology and classification; flocks and products.

* * * * *

(c) * * *

(1) * * *

(ii) * * *

(A) At intervals of not more than 90 days, 75 birds from the flock shall be tested, *Provided*, that fewer than 75 birds from the flock may be tested at any one time if all pens are equally represented and a total of at least 75 birds from the flock is tested within each 90-day period; or

* * * * *

(d) * * *

(1) * * *

(vii) Blood samples from 300 non-vaccinated birds as described in paragraph (d)(1)(vi) of this section shall be tested with either pullorum antigen or by a federally licensed Salmonella enteritidis enzyme-linked immunosorbent assay (ELISA) test when the flock is more than 4 months of age.

* * *

* * * * *

(e) * * *

(1) * * *

(ii) * * *

(A) At intervals of not more than 90 days, 75 birds from the flock shall be tested: *Provided,* That fewer than 75 birds from the flock may be tested at any one time if all pens are equally represented and a total of at least 75 birds from the flock is tested within each 90-day period; or

* * * * *

8. Section 145.33 is amended as follows:

a. Paragraph (c)(1)(i) is amended by removing the words ''with the approval of the Official State Agency and the concurrence of the Service, provided that a minimum'' and adding the words ''if all pens are equally represented and a total'' in their place.

b. Paragraph (c)(1)(ii)(A) is revised to read as set forth below.

c. In paragraph (d)(1)(iii), the first sentence is amended by removing the word ''should'' and adding the word ''shall'' in its place, and by adding the words ''or the Fishmeal Inspection Program of the National Marine Fisheries Service'' immediately before the period.

d. Paragraph (d)(1)(iv) is amended by removing the word ''should'' and adding the word ''shall'' in its place, and by adding the words ''or the Fishmeal Inspection Program of the National Marine Fisheries Service'' immediately before the semicolon.

e. Paragraph (e)(1)(i) is amended by removing the words '', with the approval of the Official State Agency and the concurrence of the Service, provided that a minimum'' and adding the words ''if all pens are equally represented and a total'' in their place.

f. Paragraph (e)(1)(ii)(A) is revised to read as set forth below.

g. A new paragraph (h) is added to read as set forth below.

§ 145.33 Terminology and classification; flocks and products.

* * * * *

(c) * * *

(1) * * *

(ii) * * *

(A) At intervals of not more than 90 days, 75 birds from the flock shall be tested, *Provided,* That fewer than 75 birds from the flock may be tested at any one time if all pens are equally represented and a total of at least 75 birds from the flock is tested within each 90-day period; or

* * * * *

(e) * * *

(1) * * *

(ii) * * *

(A) At intervals of not more than 90 days, 75 birds from the flock shall be tested: *Provided,* That fewer than 75 birds from the flock may be tested at any one time if all pens are equally represented and a total of at least 75 birds from the flock is tested within each 90-day period; or

* * * * *

(h) *U.S. S. Enteritidis Clean.* This classification is intended for primary meat-type breeders wishing to assure their customers that the chicks produced are certified free of *Salmonella enteritidis.*

(1) A flock and the hatching eggs and chicks produced from it shall be eligible for this classification if they meet the following requirements, as determined by the Official State Agency:

(i) The flock originated from a U.S. S. Enteritidis Clean flock, or meconium from the chicks and a sample of chicks that died within 7 days after hatching have been examined bacteriologically for *S. enteritidis* at an authorized laboratory and any group D salmonella samples have been serotyped.

(ii) All feed fed to the flock meets the following requirements:

(A) Pelletized feed contains either no animal protein or only animal protein products produced under the Animal Protein Products Industry (APPI) Salmonella Education/Reduction Program or the Fishmeal Inspection Program of the National Marine Fisheries Service. The protein products must have a minimum moisture content of 14.5 percent and must have been heated throughout to a minimum temperature of 190 °F, or to a minimum temperature of 165 °F for at least 20 minutes, or to a minimum temperature of 184 °F under 70 lbs. pressure during the manufacturing process;

(B) Mash feed contains either no animal protein or only animal protein product supplements manufactured in pellet form and crumbled; and

(C) All feed is stored and transported in such a manner as to prevent possible contamination.

(iii) The flock is maintained in compliance with §§ 147.21, 147.24(a), and 147.26 of this chapter.

(iv) Environmental samples, as described in § 147.12 of this chapter, are collected from the flock by an Authorized Agent when the flock reaches 4 months of age and every 30 days thereafter. The environmental samples shall be examined bacteriologically for group D salmonella at an authorized laboratory, and cultures from group D positive samples shall be serotyped.

(v) Blood samples from 300 birds from the flock are officially tested with pullorum antigen when the flock is at least 4 months of age. All birds with positive or inconclusive reactions, up to a maximum of 25 birds, shall be submitted to an authorized laboratory and examined for the presence of group D salmonella in accordance with §§ 147.10 and 147.11 of this chapter. Cultures from group D positive samples shall be serotyped.

(vi) Hatching eggs produced by the flock are collected as quickly as possible, are handled as described in

§ 147.22 of this chapter, and are sanitized or fumigated.

(vii) Hatching eggs produced by the flock are incubated in a hatchery that is in compliance with the recommendations in §§ 147.23 and 147.24(b) of this chapter, and the hatchery must have been sanitized either by a procedure approved by the Official State Agency or by fumigation.

(2) If *Salmonella enteritidis* serotype Enteritidis (SE) is isolated from a specimen taken from a bird in the flock, except as provided in paragraph (h)(3) of this section, the flock shall not be eligible for this classification.

(3) If SE is isolated from an environmental sample collected from the flock in accordance with in paragraph (h)(1)(iv) of this section, 25 randomly selected live birds from the flock must be bacteriologically examined for SE as described in § 147.11 of this chapter. If only one bird from the 25-bird sample is found positive for SE, the participant may request bacteriological examination of a second 25-bird sample from the flock. If no SE is recovered from any of the specimens in the second sample, the flock will be eligible for the classification and will remain eligible for this classification if the flock is tested in accordance with paragraph (h)(1)(v) of this section each 30 days and no positive samples are found.

(4) In order for a hatchery to sell products of this classification, all products handled by the hatchery must meet the requirements of this paragraph.

(5) This classification may be revoked by the Official State Agency if the participant fails to follow recommended corrective measures. The Official State Agency shall not revoke the participant's classification until the participant has been given an opportunity for a hearing in accordance with rules of practice adopted by the Official State Agency. (Approved by the Office of Management and Budget under control number 0579–0007)

§ 145.43 [Amended]

9. In § 145.43, paragraph (f)(3)(ii) is amended by adding the words ''or the Fishmeal Inspection Program of the National Marine Fisheries Service'' immediately before the period.

10. In § 145.44, a new paragraph (d) is added to read as follows:

§ 145.44 Terminology and classification; States.

* * * * *

(d) *U.S. M. Synoviae Clean State, Turkeys.* (1) A State will be declared a U.S. M. Synoviae Clean State, Turkeys, if the Service determines that:

(i) No *Mycoplasma synoviae* is known to exist nor to have existed in turkey breeding flocks in production within the State during the preceding 12 months;

(ii) All turkey breeding flocks in production are tested and classified as U.S. M. Synoviae Clean or have met equivalent requirements for *M. synoviae* control under official supervision;

(iii) All turkey hatcheries within the State only handle products that are classified as U.S. M. Synoviae Clean or have met equivalent requirements for *M. synoviae* control under official supervision;

(iv) All shipments of products from turkey breeding flocks other than those classified as U.S. M. Synoviae Clean, or equivalent, into the State are prohibited;

(v) All persons performing poultry disease diagnostic services within the State are required to report to the Official State Agency within 48 hours the source of all turkey specimens that have been identified as being infected with *M. synoviae;*

(vi) All reports of *M. synoviae* infection in turkeys are promptly followed by an investigation by the Official State Agency to determine the origin of the infection; and

(vii) All turkey breeding flocks found to be infected with *M. synoviae* are quarantined until marketed under supervision of the Official State Agency.

(2) The Service may revoke the State's classification as a U.S. M. Synoviae Clean State, Turkeys, if any of the conditions described in paragraph (d)(1) of this section are discontinued. The Service shall not revoke the State's classification as a U.S. M. Synoviae Clean State, Turkeys, until it has conducted an investigation and the Official State Agency has been given an opportunity for a hearing in accordance with rules of practice adopted by the Administrator of the Service.

11. In § 145.52, a new paragraph (c) is added to read as follows:

§ 145.52 Participation.

* * * * *

(c) Subject to the approval of the Service and the Official State Agencies in the importing and exporting States, participating flocks may report poultry sales to importing States by using printouts of computerized monthly shipping and receiving reports in lieu of VS Form 9–3, ''Report of Sales of Hatching Eggs, Chicks, and Poults.''

PART 147—AUXILIARY PROVISIONS ON NATIONAL POULTRY IMPROVEMENT PLAN

12. The authority citation for part 147 continues to read as follows:

Authority: 7 U.S.C. 429; 7 CFR 2.22, 2.80, and 371.2(d).

13. In § 147.5, footnote 4 is amended by removing the words ''Animal and Plant Health Inspection Service, Veterinary Services, Operational Support, 4700 River Road Unit 33, Riverdale, Maryland 20737–1231'' and adding the words ''National Poultry Improvement Plan, Veterinary Services, APHIS, USDA, 1500 Klondike Road, Suite A–102, Conyer, GA 30207'' in their place.

14. Section 147.6 is amended as follows:

a. In § 147.6, paragraph (b)(2) is amended by adding two new sentences at the end of the paragraph to read as set forth below.

b. In paragraph (b)(8), the words ''on the retest'' are added immediately after the word ''positive''.

§ 147.6 Procedure for determining the status of flocks reacting to tests for Mycoplasma gallisepticum, Mycoplasma synoviae, and Mycoplasma meleagridis.

* * * * *

(b) * * *

(2) * * * *Provided*, that for egg-type and meat-type chicken and waterfowl, exhibition poultry, and game bird flocks, if more than 50 percent of the samples are positive for either *Mycoplasma gallisepticum, M. synoviae,* or both, the HI and/or the SPD test shall be conducted on 10 percent of the positive samples or 25 positive samples, whichever is greater. The results of the HI and/or SPD tests must be followed by the action prescribed in paragraphs (b)(3), (b)(4), and (b)(5) of this section.

* * * * *

15. Section 147.11 is amended as follows:

a. Paragraph (a)(3) is amended by adding a new sentence at the end of the paragraph to read as set forth below.

b. In paragraph (a)(4), the last sentence is amended by adding the words ''and paragraph (a)(5) of this section'' immediately after the words ''illustration 2'', and by adding the words '', and a colony lift assay to aid in the detection of group D salmonella colonies'' immediately after the word ''XLT4''.

c. Paragraph (a)(5) is revised as set forth below.

d. At the end of paragraph (a)(6), illustration 2 is revised as set forth below.

§ 147.11 Laboratory procedure recommended for the bacteriological examination of salmonella.

(a) * * *

(3) * * * As a supplemental procedure, a colony lift assay may also

be used as a screening test to aid in the detection of group D salmonella suspect colonies on selective and nonselective agar culture plates.

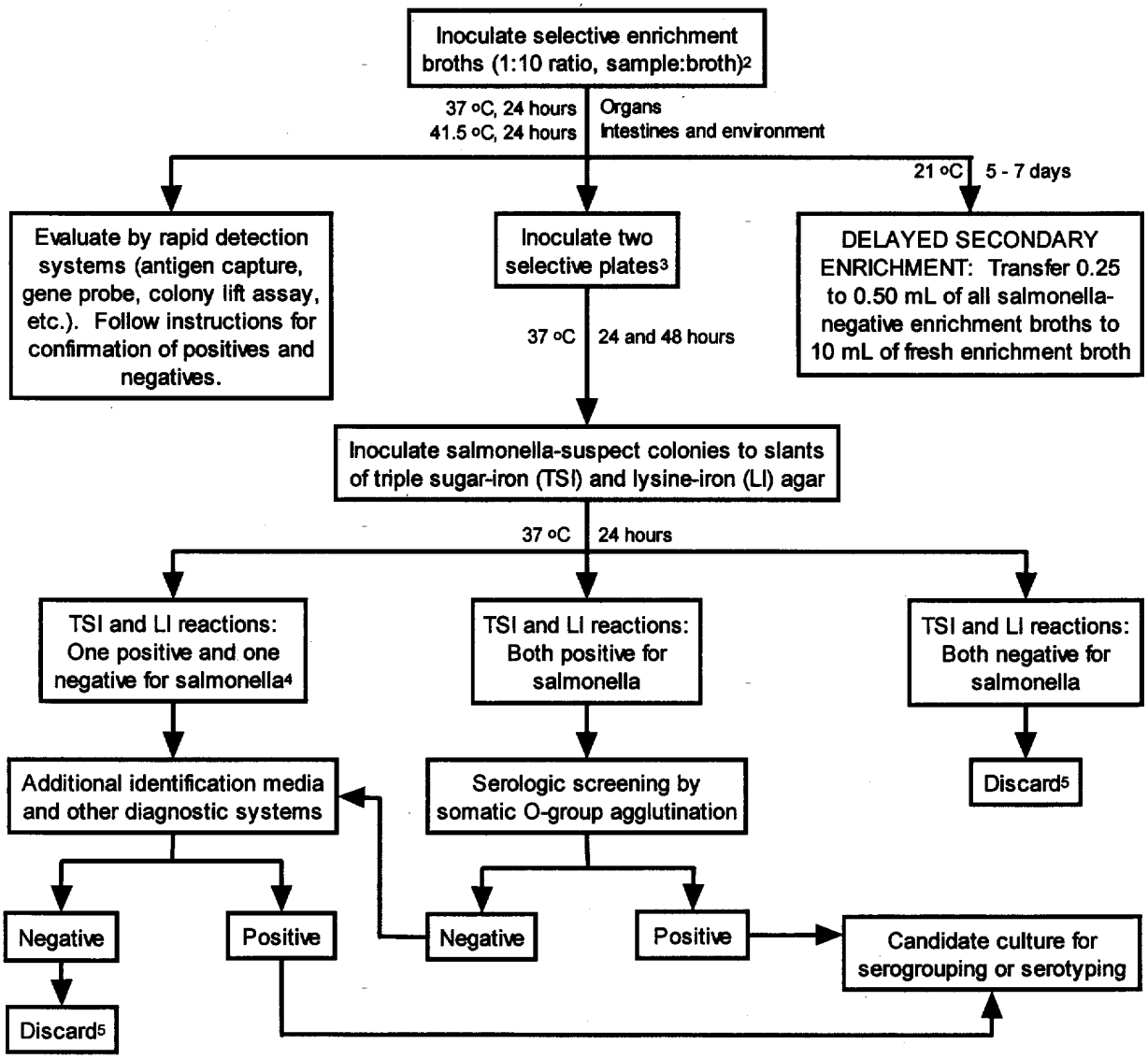
* * * * *

(5) As a supplement to the standard colony pick to triple sugar-iron (TSI) and lysine-iron (LI) agar slants, a group D colony lift assay may be utilized to signal the presence of hard-to-detect group D salmonella colonies on agar culture plates. A system such as the Analytical Profile Index for Enterobacteriaceae (API) may also be utilized to aid cultural identifications.

* * * * *

BILLING CODE 3410–34–P

ILLUSTRATION 2: *Environmental, organ, and intestinal samples.*[1]
Environmental monitoring programs and pullorum-typhoid reactors.



[1] Organ tissues from all reactor birds should also be evaluated without selective enrichment (refer to illustration 1).

[2] Hajna TT or Mueller-Kauffmann tetrathionate enrichment broth is preferred over selenites.

[3] For enrichment broths of organ samples, inoculate xylose-lysine-desoxycholate (XLD) or XLD-Novobiocin (XLDN) and brilliant green (BG) or BG-Novobiocin (BGN) media. One of the media shall be either XLDN or BGN. For enrichment broths of intestinal or environmental samples, inoculate xylose-lysine-tergitol 4 (XLT4) or XLDN and BGN or BG media.

[4] If combined results with TSI and LI agars, additional identification media, and O-group screening procedures are inconclusive, restreak original colony onto selective plating agar to check for purity.

[5] Reevaluate if epidemiologic, necropsy, or other information indicates the presence of an unusual strain of Salmonella.

* * * * *

BILLING CODE 3410–34–C

§§ 147.12, 147.14, 147.15, and 147.16 [Amended]

16. In §§ 147.12, 147.14, 147.15, and 147.16, footnotes 11 through 21 and their references are redesignated as footnotes 12 through 22.

17. Section 147.12 is amended as follows:

a. Paragraphs (a) through (c) are redesignated as follows:

Old section	New section
147.12(a), introductory text.	147.12(b)(1).
147.12(a)(1)	147.12(b)(1)(i).
147.12(a)(2)	147.12(b)(1)(ii).
147.12(b), introductory text.	147.12(b)(2).
147.12(b)(1)	147.12(b)(2)(i).
147.12(c), introductory text.	147.12(b)(3).
147.12(c)(1)	147.12(b)(3)(i).
147.12(c)(2)	147.12(b)(3)(ii).
147.12(c)(2)(i)	147.12(b)(3)(ii)(A).
147.12(c)(2)(ii)	147.12(b)(3)(ii)(B).

b. A new paragraph (a) and an introductory paragraph (b) are added to read as set forth below.

c. In newly redesignated paragraph (b)(1), the introductory text of the paragraph is amended by removing the reference ''(a)(1) or (2)'' and replacing it with the reference ''(b)(1)(i) or (b)(1)(ii)''.

d. In newly redesignated paragraph (b)(2), the introductory text of the paragraph is amended by removing the reference ''(a)(1)'' and replacing it with the reference ''(b)(2)(i)''.

e. In newly redesignated paragraph (b)(3)(ii), the text of newly redesignated footnote 12 is amended by removing the words ''Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import-Export, 4700 River Road Unit 38, Riverdale, Maryland 20737–1231'' and adding the words ''National Poultry Improvement Plan, Veterinary Services, APHIS, USDA, 1500 Klondike Road, Suite A–102, Conyer, GA 30207'' in their place.

f. A new paragraph (b)(2)(ii) is added and reserved.

§ 147.12 Procedures for collecting environmental samples and cloacal swabs for bacteriological examination.

* * * * *

(a) *For egg- and meat-type chickens, waterfowl, exhibition poultry, and game birds.* All samples and swabs described in this paragraph shall be cultured in accordance with illustration 2 of § 147.11, including delayed secondary enrichment. All salmonellae recovered shall be serogrouped or serotyped.

(1) *Environmental samples.* Fecal material, litter, dust, or floor litter surface or nest box drag swab samples to be submitted for bacteriological examination shall be collected in accordance with the procedures described in paragraphs (a)(1), (a)(2), or (a)(3) of this section:

(i) *Procedure for sampling in broth.* Authorized laboratories will provide capped tubes 1 to 2 cm in diameter and 15 to 20 cm in length that are two-thirds full of a recently made, refrigerated, sterile enrichment broth (Hajna or Mueller-Kauffmann Tetrathionate Brilliant Green) for each sample. Sufficient tubes shall be taken to the premises to provide at least one tube per pen or one tube per 500 birds, whichever is greater. At least one sterile, cotton-tipped applicator will be needed for each tube. The dry applicator is first placed in or drawn through fresh manure (under roost, near water troughs, fecal droppings, or diarrhetic droppings). After each streaking, place the cotton-tipped applicator in the tube of broth and swirl the applicator to remove the collected material. Withdraw the applicator from the tube and use it to take additional specimens by streaking on or through areas where defecation, trampling of feces, or settling of dust is common; e.g., on or near waterers, feeders, nests, or rafters, etc. When the volume of material collected equals approximately 10 percent of the volume of the broth (usually 10–12 streakings), place the applicator in the tube and break the stick in half, leaving the lower or cotton-tipped half in the broth and retaining the upper half for future disposal. Replace the cap on the inoculated tube and continue the sampling procedure in other areas of the pen.

(ii) *Procedure for sampling in dry containers.* Place a sample of fecal material, litter, or dust in a sterile, sealable container. The sample shall consist of several specimens of material taken from a representative location in the pen or house. Collect at least 10 g (approximately a heaping tablespoonful) of material for each sample. Collect the specimens in each sample with a sterile tongue depressor or similar uncontaminated instrument. The samples shall vary in type and consistency. Half of the samples shall be comprised of material representing defecated matter from a large portion of the flock; i.e., trampled, caked material near waterers and feeders. The minimum number of samples to be taken shall be determined by the following: Five samples from pens or houses of up to 500 birds; Ten samples from pens or houses of 500 to 2,500 birds; Fifteen samples from pens or houses with more than 2,500 birds. The samples may be pooled to not fewer than five samples at the laboratory as long as the volume of material collected equals approximately 10 percent of the volume of the broth.

(2) *Cloacal swabs.* Cloacal swabs for bacteriological examination shall be taken from each bird in the flock or from a minimum of 500 birds in accordance with the procedure described in paragraph (a)(2)(i) of this section.

(i) *Procedure for taking cloacal swabs.* The authorized laboratory will provide sterile capped tubes or other suitable containers and cotton-tipped applicators for use in taking the cloacal swabs. Insert the cotton-tipped applicator into the cloaca and rectum in such a manner as to ensure the collection of fecal material. Place the swab and adhering fecal material in the tube and break the stick in half, keeping the upper half of the stick for future disposal. The cloacal swabs may be combined in the sterile tubes in multiples of five or in combinations specified by the authorized laboratory.

(ii) [Reserved].

(3) *Drag-swabs.* Utilization of drag swabs (DS) involves the exposure of gauze pads, a key component of a DS sampler, to the surface of random, flock-representative floor litter and nest box areas. The sampler pads shall be sterile and slightly moist to promote adherence of particulate material, and impregnated with double-strength skim milk [11] to protect salmonella viability during sample collection, batching, storage, and shipment. Floor litter surface DS sample results tend to reflect the salmonella carrier/shedder status of a flock. Nonetheless, other environmental samples as described in paragraphs (a)(1)(i), (a)(1)(ii), or (a)(3)(iv) of this section shall also be periodically collected.

(i) *Drag-swab sampler assembly.* Drag-swab (DS) samplers may be assembled using two 3- by 3-inch sterile gauze pads; size 20 wrapping twine; and paper clips, staples, or similar fasteners. Fold each gauze pad in half and attach one pad to a 2-foot-long (60 cm) piece of twine and the other to a 1-foot-long (30 cm) piece of twine. To attach a pad to the twine with a paper clip, bend the end wires of the paper clip slightly and push them through the fabric of the folded pad, thus securing the clips to the folded pads; then securely tie the twine to the free rounded end of the paper clip. To attach a pad to the twine

[11] Obtain procedure for preparing double strength skim milk from USDA-APHIS ''Recommended Sample Collection Methods for Environmental Samples,'' available from the National Poultry Improvement Plan, Veterinary Services, APHIS, USDA, 1500 Klondike Road, Suite A–102, Conyer, GA 30207.

with a staple, staple the twine to the pad near the center of the fold, applying the staple at a right angle to the twine and parallel to the fold. (A pre-tied knot in the free end of the twine will prevent the twine from slipping under the staple during use.) Once the pads and the twine have been attached, securely connect the free ends of both lengths of twine to a small loop tied at the end of a 5-foot-long piece of twine. The resulting assembly resembles the letter Y, with a long vertical stem and two diagonal branches of different lengths with a gauze pad securely attached to the end of each branch. Wrap the twine around each two-pad DS sampler to produce a small bundle. Autoclave the assembled DS sampler bundle and transfer it with sterile forceps or other aseptic method to a resealable sterile bag. Aseptically add 15 mL of double-strength skim milk to the bag and massage the milk into the gauze pads. Seal the bags and store at -20 °C.

(ii) *Procedures and applications for DS samplers.* DS samplers shall be completely thawed prior to use. Complete pad/twine/fastener assemblies shall be used to sample floor litter surfaces; nest box surfaces may be sampled using 3- by 3-inch sterile gauze pads impregnated with double-strength skim milk in the manner described in paragraph (a)(1) of this section. In either instance, the Plan participant collecting the samples shall wear a fresh pair of disposable sterile gloves for each flock or house sampled. Each sampler bag shall be marked with the type of sample (floor litter or nest box surface) and the identity of the house or flock from which the sample was taken.

(iii) *Floor litter sampling technique.* For flocks with fewer than 500 breeders, at least one DS set (two DS pads) shall be dragged across the floor litter surface for a minimum of 15 minutes. For flocks with 500 or more breeders, a minimum of two DS sets (four DS pads) shall be dragged across the floor litter surface for a minimum of 15 minutes per DS set. Upon completion of dragging, lower each DS pad by its attached twine into a separate, resealable sterile bag. Alternatively, each DS set of two pads may be lowered by its attached twine into the storage/transport bag from which the DS set was originally taken. Remove the twine from the pad or DS set by grasping the pad or DS set through the sides of the bag with one hand while pulling on the twine with the other hand until the connection is broken. Seal the bags and promptly refrigerate them to between 2 and 4° C. Do not freeze. Discard the twine in an appropriate disposal bag.

(iv) *Nest box sampling technique.* The Plan participant shall collect nest-box samples by using two 3- by 3-inch sterile gauze pads premoistened with double-strength skim milk and wiping the pads over assorted locations in about 10 percent of the total nesting area. Upon completion, place each pad in a separate, resealable sterile bag. Seal the bags and promptly refrigerate them to between 2 and 4° C. Do not freeze.

(v) *Culturing of litter surface and nest box samples.* When refrigerated to between 2 and 4° C, pads impregnated with double-strength skim milk may be stored or batched for 5 to 7 days prior to culturing. Pads shipped singly or paired in a single bag shall not be pooled for culturing but shall be separately inoculated into 60 mL of selective enrichment broth.

(b) *For turkeys.* * * *

* * * * *

18. In § 147.14, paragraph (a)(2)(ii) is revised to read as set forth below.

§ 147.14 Procedures to determine status and effectiveness of sanitation monitored program.

* * * * *

(a) * * *

(2) * * *

(ii) Tetrathionate selective enrichment broths, competitor-controlling plating media (XLT4, BGN, etc.), delayed secondary enrichment procedures, and colony lift assays detailed in paragraph (a)(5) and illustration 2 of § 147.11.

19. A new § 147.17 is added to subpart B to read as follows:

§ 147.17 Laboratory procedure recommended for the bacteriological examination of cull chicks for salmonella.

The laboratory procedure described in this section is recommended for the bacteriological examination of cull chicks from egg-type and meat-type chicken flocks and waterfowl, exhibition poultry, and game bird flocks for salmonella.

(a) From 25 randomly selected 1- to 5-day-old chicks that have not been placed in a brooding house, prepare 5 organ pools, 5 yolk pools, and 5 intestinal tissue pools as follows:

(1) *Organ pool:* From each of five chicks, composite and mince 1- to 2-gram samples of heart, lung, liver, and spleen tissues and the proximal wall of the bursa of Fabricius.

(2) *Yolk pool:* From each of five chicks, composite and mince 1- to 2-gram samples of the unabsorbed yolk sac or, if the yolk sac is essentially absent, the entire yolk stalk remnant.

(3) *Intestinal pool:* From each of five chicks, composite and mince approximately 0.5 cm^2 sections of the crop wall and 5-mm-long sections of the duodenum, cecum, and ileocecal junction.

(b) Transfer each pool to tetrathionate selective enrichment broth (Hajna or Mueller-Kauffmann) at a ratio of 1 part tissue pool to 10 parts broth.

(c) Repeat the steps in paragraphs (a) and (b) of this section for each five-chick group until all 25 chicks have been examined, producing a total of 15 pools (5 organ, 5 yolk, and 5 intestinal).

(d) Culture the 15 tetrathionate pools as outlined for selective enrichment in illustration 2 of § 147.11. Incubate the organ and yolk pools for 24 hours at 37 °C and the intestinal pools at 41.5 °C. Plate as described in illustration 2 of § 147.11 and examine after both 24 and 48 hours of incubation. Confirm suspect colonies as described. Further culture all salmonella-negative tetrathionate broths by delayed secondary enrichment procedures described for environmental, organ, and intestinal samples in illustration 2 of § 147.11. A colony lift assay may also be utilized as a supplement to TSI and LI agar picks of suspect colonies.

§ 147.26 [Amended]

20. In § 147.26, in paragraph (a), the introductory text is amended by removing the word ''and'' and by adding the words '', U.S. S. Enteritidis Monitored, and U.S. S. Enteritidis Clean'' immediately before the word ''classifications''.

21. In § 147.43, the introductory text of paragraph (a) is amended by adding two new sentences before the first sentence to read as set forth below; by removing the words ''the Assistant Secretary of Agriculture for Marketing and Inspection Services, or his/her designee,''; and by removing the words ''and who shall be designated as vice chairperson,''.

§ 147.43 General Conference Committee.

(a) The General Conference Committee Chairperson and the Vice Chairperson shall be elected by the members of the General Conference Committee. A representative of the Animal and Plant Health Inspection Service will serve as Executive Secretary and will provide the necessary staff support for the General Conference Committee. * * *

* * * * *

Done in Washington, DC, this 15th day of March 1996.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–6834 Filed 3–20–96; 8:45 am]

BILLING CODE 3410–34–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 748

Suspicious Activity Report; Report of Catastrophic Act and Bank Secrecy Act Compliance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: This final rule changes existing references from ''Criminal Referral Form'' to ''Suspicious Activity Report'' to conform the language in the rule to the new Suspicious Activity Report (SAR) which the financial regulatory agencies and the Department of the Treasury have developed to replace the Criminal Referral Form (CRF). It also reduces the required retention period for SARs' and any attachment thereto from the current 10 years to 5 years. This final rule streamlines reporting requirements by providing that credit unions file a new SAR with NCUA and appropriate Federal law enforcement agencies by sending the SARs to the Financial Crimes Enforcement Network of the Department of the Treasury.

EFFECTIVE DATE: April 1, 1996.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

FOR FURTHER INFORMATION CONTACT: John K. Ianno or Jon Canerday, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION: An interagency Bank Fraud Working Group (BFWG), consisting of representatives from many federal agencies, including the federal financial institutions supervisory agencies (the Agencies) [1] and law enforcement agencies, was formed in 1984. The BFWG addresses substantive issues, promotes cooperation among the Agencies and federal and state law enforcement agencies, and improves the federal government's response to white collar crime in financial institutions. It is under the auspices of the BFWG that the revisions to this regulation and the reporting requirements are being made.

Suspicious Activity Report

The Agencies have been working on a project to improve the criminal referral process, to reduce unnecessary reporting burdens on financial institutions, and to eliminate confusion associated with the current duplicative reporting of suspicious currency transactions in criminal referral forms and currency transaction reports (CTRs). Contemporaneously, Treasury analyzed the need to revise the procedures used by financial institutions for reporting suspicious currency transactions. As a result of these reviews, the Agencies and Treasury approved the development of a new referral process that includes suspicious currency transaction reporting.

To implement the reporting process, and to reduce unnecessary burdens associated with these various reporting requirements, the Agencies and the Department of the Treasury, through its Financial Crimes Enforcement Network (FinCEN), developed a new form for reporting known or suspected federal criminal law violations and suspicious currency transactions. The new report is designated the Suspicious Activity Report (SAR). The SAR is a simplified and shortened version of its predecessors. The new referral process and the SAR reduce the burden on credit unions for reporting known or suspected criminal violations and suspicious currency transactions. The SAR increases the reporting thresholds at which filing by credit unions becomes mandatory. It also reduces from several to one the number of copies of the form a credit union is required to file and eliminates the need to file supporting documents with the form. Supporting documents must be retained for five years instead of the ten years currently required. These changes will reduce reporting burdens for credit unions.

Agencies anticipate that the new reporting system will be operational April 1,1996. Once implemented, all referrals will be housed in one central database. As with the CRF, complete instructions for filing will continue to be on the SAR itself. The new referral process will be detailed in a Letter to Credit Unions to be issued contemporaneously with the new form. Until that time, credit unions will continue to file reports in accordance with current requirements.

Rulemaking—5 U.S.C. 553

The NCUA finds that good cause exists to make this final rule effective on April 1, 1996, less than 30 days after its publication date. The rule implements technical changes to NCUA's existing rule intended to conform its language to the adoption of the SAR, and reduces the reporting and recordkeeping requirements of credit unions. The adoption of this rule, effective April 1, 1996, will assure that credit unions are able to comply with NCUA and Treasury reporting requirements for suspicious activity by completing a single SAR and filing it at one location.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The types of changes made by this rule have no economic impact on credit unions. These are merely housekeeping changes. Therefore, the NCUA Board has determined and certifies that, under the authority granted in 5 U.S.C. 605(b), this final rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This final rule makes technical changes to reflect the use of Suspicious Activity Reports in place of Criminal Referral Forms and shortens the records retention requirements for the form and related documents. The Agencies and Treasury have submitted the SAR to OMB for approval. The same amount of information will continue to be collected under this rule although reporting will be simplified. The Rule does not change any paperwork requirements.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. This Rule applies to all federally insured credit unions, simplifies the reporting process, and shortens the document retention period from that contained in the present rule. The NCUA Board has determined that this amendment is not likely to have any direct effect on states, the relationship between states, or the distribution of power and responsibilities among the various levels of government because federally insured credit unions are currently required to report crimes or suspected crimes which occur at their offices.

List of Subjects in 12 CFR Part 748

Bank Secrecy Act, Credit unions, Crime, Currency, Reporting and recordkeeping requirements, Security measures.

[1] The federal financial institutions supervisory agencies are the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the National Credit Union Administration.

By the National Credit Union Administration Board on March 13, 1996.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends 12 CFR chapter VII as follows:

PART 748—SUSPICIOUS ACTIVITY REPORT; REPORT OF CATASTROPHIC ACT AND BANK SECRECY ACT COMPLIANCE

1. The heading of Part 748 is revised as set forth above.

2. The authority citation for Part 748 is revised to read as follows:

Authority: 12 U.S.C. 1766(a), 1786(q); 31 U.S.C. 5311.

3. Section 748.1 (c) is revised to read as follows:

§ 748.1 Filing of reports.

* * * * *

(c) *Suspicious Activity Report.* (1) Each federally-insured credit union will report any crime or suspected crime that occurs at its office(s), utilizing NCUA Form 2362, Suspicious Activity Report (SAR), within thirty calendar days after discovery. Each federally-insured credit union must follow the instructions and reporting requirements accompanying the SAR. Copies of the SAR may be obtained from the appropriate NCUA Regional Office.

(2) Each federally-insured credit union shall maintain a copy of any SAR that it files and the original of all attachments to the report for a period of five years from the date of the report, unless the credit union is informed in writing by the National Credit Union Administration that the materials may be discarded sooner.

(3) Failure to file a SAR in accordance with the instructions accompanying the report may subject the federally-insured credit union, its officers, directors, agents or other institution-affiliated parties to the assessment of civil money penalties or other administrative actions.

(4) Filing of Suspicious Activity Reports will ensure that law enforcement agencies and NCUA are promptly notified of actual or suspected crimes. Information contained on SARs' will be entered into an interagency database and will assist the federal government in taking appropriate action.

[FR Doc. 96–6702 Filed 3–20–96; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–13; Amendment 39–9453; AD 95–25–08]

Airworthiness Directives; Royal Inventum Company DR1 and DR6 Series Galley Water Heaters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Royal Inventum Company DR1 and DR6 Series Galley Water Heaters, that requires the installation of a pressure relief valve, and 3-phase safety devices on each Royal Inventum Company DR1 and DR6 series galley water heater. This amendment is prompted by a report of a Royal Inventum DR6 water heater explosion during an overheat test at a maintenance facility. The actions specified by this AD are intended to prevent explosions of Royal Inventum Company DR1 and DR6 series galley water heaters, which could cause personal injury or galley damage to the aircraft.

DATES: Effective May 20, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 20, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from B/E Aerospace, Inventum Galley Products Division (Royal Inventum Company), P.O. Box 1152, 3430 BD Nieuwegin, The Netherlands. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA, 01803–5299; telephone (617) 238–7155, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Royal Inventum Company DR1 and DR6 series galley water heaters was published in the Federal Register on June 21, 1995 (60 FR 32287). That action proposed to require the installation of new pressure relief valves, and 3-phase safety devices on each Royal Inventum Company DR1 and DR6 series galley water heater. The actions would be required to be in accordance with Inventum Bilthoven-Holland Service Bulletin's (SB's) 25__330, Revision 1, dated September 28, 1977; SB 25__331, Revision 1, dated September 28, 1977; and Inventum Alert Service Bulletin (ASB) DR1/DR6–25–4, Revision A, dated December 6, 1993, that specify the installation of a pressure relief valve; and Inventum Bilthoven-Holland SB's 25__340, dated July 7, 1977; SB 25__344, dated January 18, 1978; SB 25__345, dated February 16, 1978; SB 25__346, dated February 16, 1978; and Inventum ASB DR1/DR6–25–5, Revision A, dated December 6, 1993, that specify the installation of 3-phase safety devices. The Director-General of Civil Aviation of the Netherlands has classified these service bulletins as mandatory and issued Airworthiness Directive BLA 93–168 (AB), dated December 17, 1993, in order to assure the airworthiness of these water heaters.

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

One commenter states that the Inventum DR6 series water heaters have been used on Boeing 747, 757 and 767 series aircraft and recommends that the Applicability be changed to show these aircraft. The commenter further states that they were unable to determine usage of Inventum DR1 and DR6 series water heaters on Boeing 727 and 737 series aircraft. The FAA agrees. Since the Boeing 727 and 737 series aircraft usage was given to the FAA by the Director-General of Civil Aviation of the Netherlands, the FAA will retain reference to the Boeing 727 and 737 series aircraft in the Applicability section. Reference to the Boeing 747, 757 and 767 series aircraft will be added. Operators are cautioned, however, not to read the list of aircraft as an exclusive list of the aircraft that may have the affected water heaters installed. This AD applies to all aircraft with an affected water heater, whether or not listed.

One commenter supports the AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden

on any operator nor increase the scope of the AD.

The FAA estimates that 250 water heaters installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately six and one half work hours per water heater to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $250 per aircraft. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $94,500.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

39.13 [Amended]

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

95–25–08 Royal Inventum Company: Amendment 39–9453. Docket 95–ANE–13.

Applicability: Royal Inventum Company DR1 and DR6 series galley water heaters, installed on but not limited to Boeing 727, 737, 747, 757 and 767 series, McDonnell Douglas DC–9 series; and Fokker F.28 series (except Mk. 0100) aircraft.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent possible explosion of water heaters that could cause personal injury and aircraft damage, accomplish the following:

(a) Within 90 days after the effective date of this AD install a pressure relief valve in accordance with Inventum Alert Service Bulletin (ASB) DR1/DR6–25–4, Revision A, dated December 6, 1993, or Inventum Service Bulletin (SB) 25__330, Revision 1, dated September 28, 1977; or SB 25__331, Revision 1, dated September 28, 1977; and two 3-phase safety devices in accordance with Inventum ASB DR1/DR6–25–5, Revision A, dated December 6, 1993, or SB 25__340, dated July 7, 1977; SB 25__344, dated January 18, 1978; or SB 25__345, dated February 16, 1978; or SB 25__346, dated February 16, 1978.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Boston Aircraft Certification Office.

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

(d) The modification and inspection shall be done in accordance with the following service bulletins:

Document No.	Pages	Revision	Date
Inventum Alert Service Bulletin (ASB) DR1/DR6–25–4 ..... Total Pages: 5.	1–5	A	12/6/1993
Inventum Bilthoven-Holland (SB) 25__330 ..... Total Pages: 4.	1–4	1	9/28/1977
SB 25__331 ..... Total Pages: 4.	1–4	1	9/28/1977
ASB DR1/DR6–25–5 ..... Total Pages: 5.	1–5	A	12/6/1993
SB 25__340 ..... Total Pages: 6.	1–6	N/A	7/7/1977
SB 25__344 ..... Total Pages: 7.	1–7	N/A	1/18/1978
SB 25__345 ..... Total Pages: 7.	1–7	N/A	2/16/1978
SB 25__346 ..... Total Pages: 7.	1–7	N/A	2/16/1978

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from B/E Aerospace, Inventum Galley Products Division (Royal Inventum Company), P.O. Box 1152, 3430 BD Nieuwegin, The Netherlands. Copies may be inspected at the FAA, New England Region,

Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(e) This amendment becomes effective on May 20, 1996.

Issued in Burlington, Massachusetts, on January 29, 1996.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–5854 Filed 3–20–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 94–NM–179–AD; Amendment 39–9542; AD 96–06–05]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes two existing airworthiness directives (AD), applicable to certain Boeing Model 727 series airplanes, that currently require repetitive visual inspections to detect cracks of the elevator rear spar, and repair, if necessary. This amendment adds new inspections to detect cracks and loose brackets of the elevator rear spar; adds a new terminating modification for the inspections, and expands the applicability of the rules to include additional airplanes. This amendment is prompted by reports of cracking in the spar radii at the tab hinge location of the elevator rear spar on certain airplanes. The actions specified by this AD are intended to prevent cracking in elements of the elevator rear spar assembly, which could result in excessive free play of the elevator control tab and possible tab flutter.

DATES: Effective April 22, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 22, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walter Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2774; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 84–22–02, amendment 39–4951 (49 FR 45743, November 20, 1984), and AD 87–24–03, amendment 39–5769 (52 FR 43742, November 16, 1987), both of which are applicable to Boeing Model 727 series airplanes, was published in the Federal Register as a supplemental notice of proposed rulemaking on September 19, 1995 (60 FR 47896). The action proposed to require repetitive visual inspections to detect cracks and loose brackets of the elevator rear spar, and various follow-on actions. The supplemental NPRM also proposed to require the installation of a modification of the elevator rear spar that would constitute terminating action for the repetitive inspections. Additionally, the supplemental NPRM proposed to expand the applicability of the existing proposed rules to include additional airplanes.

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

One commenter supports the proposal.

A discussion of other comments received follows:

Requests to Withdraw the Proposal

Two commenters request that the FAA withdraw the proposal. These commenters consider that the problem addressed is strictly a quality control problem and is not associated with airplanes on a fleet-wide basis.

The FAA does not concur. There have been at least 13 occurrences of cracking found in modified elevator rear spars on in-service airplanes. New information has revealed that the shear plate contacting the radius of the rear spar is not the only problem that is creating the addressed cracking. New data show that loose tee fittings attached to the rib may also contribute to cracking in the rear spar. In light of this, the FAA finds no reason to consider the unsafe condition to be limited to a few airplanes, nor a single operator's quality program.

Request To Allow Inspections With the Elevator Tab Installed

One commenter requests that the proposed rule be revised to allow the inspection of modified elevator rear spars to be accomplished with the elevator tab installed. This commenter, an operator, states that it has inspected all of its affected modified airplanes using this method and have not found any cracking of rear spars.

The FAA cannot concur with this commenter's request since no technical data were submitted that could demonstrate that this method of inspection would provide an acceptable level of safety (compared to the proposed inspection methods). Additionally, the reliability of the inspection method suggested by the commenter is not clear. (For example, would other operators obtain accurate results? Have the results of inspections performed with elevator tabs installed been compared those of inspections performed with elevator tabs not installed?) The FAA suggests that this commenter submit justifying data and apply for the approval of this inspection as an alternative method of compliance with the AD, in accordance with the provisions of paragraph (j) of the final rule.

Requests To Extend the Inspection Interval for Modified Airplanes

Several commenters request that the proposed rule be revised to extend the compliance time for accomplishing the visual inspection of modified airplanes. One commenter requests that it be extended from the proposed 4,000 flight hours to 3,000 flight cycles after the effective date of the final rule. This commenter, an operator, states that it modified its fleet of affected airplanes (in accordance with AD 84–22–02 and 87–24–03) between 1987 and 1992. This operator has been inspecting the subject area on these modified airplanes at every ''C'' check (approximately every 3,000 flight cycles) and has found no cracking to date. Other commenters request that the initial inspection be required at the next regularly scheduled ''C'' check scheduled for the airplane. These commenters assert that the work hours needed to accomplish this inspection and the complexity of this inspection require that it be accomplished at a main base facility and by maintenance personnel specifically trained for this task.

The FAA does not concur with these commenters' request. The FAA has received reports of cracking in rear spars on several modified airplanes after approximately 4,000 flight hours (after

modification). In addition, a crack has been found on a new, modified one-piece spar that had accumulated approximately 4,000 fight hours. In light of these findings, the FAA has determined that the compliance time of 4,000 flight hours represents the maximum interval of time allowable for the affected airplanes to continue to operate prior to accomplishing the required inspection without compromising safety. The FAA does not consider a ''C'' check to be an appropriate inspection interval, since maintenance schedules for ''C'' checks may vary from operator to operator, and there would be no assurance that the inspection would be accomplished during the maximum interval of 4,000 flight hours. Further, the FAA does not consider 3,000 flight cycles to be an appropriate interval, since many fatigue cycles can occur per flight and the subject cracking is associated with fatigue. Consequently, an interval of ''3,000 flight cycles'' would result in a much longer time period than data show is acceptable.

Requests To Delete Calendar Time From Inspection Intervals

Several commenters request that the proposed rule be revised to delete the references to calendar time in the repetitive inspection intervals for both modified and unmodified spars. The proposal would require that, in those cases where no cracking is found, visual inspections be conducted every ''1,600 flight hours or 18 months, whichever occurs first.'' The commenters contend that calendar time as an inspection interval is inappropriate in this case because the subject cracking is related to fatigue (which is associated with flight cycles or flight hours), and not to conditions such as corrosion (which is associated with calendar time or environmental conditions). These commenters request that the inspection interval be expressed only in flight cycles or flight hours.

The FAA concurs. Since the cracking addressed by this AD is the result of problems associated with fatigue, it is more appropriate that structure be inspected at intervals related to flight hours rather than calendar time. The final rule has been revised to delete the references to ''18 months'' in the compliance times for the repetitive inspections.

Requests To Delete Mandatory Terminating Action

Several commenters request that the proposed rule be revised to delete the requirement to accomplish the terminating modification within 5 years. These commenters contend that continuing repetitive inspections of the area will provide an acceptable level of safety. One of these commenters, an operator, states that its existing inspection program, which has been carried out successfully in its fleet over the past 10 years, is adequate for finding and repairing cracks prior to the time that a serious cracking condition can develop. Another commenter states that it has continued to inspect its airplanes that previously have been modified and has not detected any cracking in the modified structure.

The FAA concurs that installation of the terminating modification need not be mandatory. The FAA has reconsidered the information it has received concerning the subject cracks that have been found on in service airplanes. This information indicates that cracking has been found during the scheduled inspection periods, and before any cracking was able to propagate to critical lengths. Additionally, the FAA finds that inspections are easy to accomplish, since the area is easily accessible, and they are effective in finding cracks. Moreover, the cracking is easily detectable and the consequences of the cracking are not likely to be catastrophic. In light of this, the FAA has determined that continuing inspections will provide an acceptable level of safety, and that the terminating modification need not be mandatory. The final rule has been revised to provide for a program of repetitive inspections, in lieu of installation of the terminating modification, for airplanes on which no cracking is detected during the required inspections. The terminating modification will be provided as an optional installation for those airplanes.

Requests for On-Going Repetitive Inspections in Lieu of Terminating Action

Several commenters request that, if the proposed AD is revised to delete the requirement that would mandate installation of the terminating modification, then it should include a specific schedule of repetitive inspections of the affected airplanes. These commenters provide various suggestions for this inspection schedule:

1. One commenter requests that repetitive inspections of all airplanes be allowed at intervals of 4,000 flight hours. This commenter states that it is regularly conducting inspections of all of its affected airplanes at approximately 4,000 flight hour intervals and has found little cracking or other discrepancies.

2. Another commenter requests that continued repetitive inspections of unmodified two-piece spars and all modified spars all be allowed to be conducted at intervals of 4,000 flight hours. This commenter, an operator, conducts inspections of airplanes with these configurations in its fleet every 4,000 flight hours. In the last 18 months, 33 cracked spars have been found during 84 inspections of unmodified spars, and 4 cracked spars have been found during 36 inspections of modified spars. All cracks were found and repaired in a timely manner, and no flutter of the flight control surface was experienced. Based on this experience, this commenter considers 4,000-flight hour inspections to be both effective and economical.

3. One commenter requests that the inspections of unmodified spars (either one- or two-piece) be repeated at intervals of 1,600 flight hours or 13 months, whichever occurs later. The commenter considers the proposed inspection interval of ''1,600 flight hours or 18 months, whichever occurs first'' is far too restrictive. This commenter, an operator, states that its suggested interval would allow it to conduct the inspections during its regularly scheduled maintenance periods, without disrupting scheduling.

The FAA responds to these specific suggestions as follows:

As for Item 1, the FAA cannot concur with the suggestion that all airplanes, whether modified or unmodified, be inspected at the same interval, as one commenter suggested. Since reports indicate that cracking has been found on modified one-piece spars within 4,000 flight hours after modification, inspections every 4,000 flight hours are appropriate for these spars. However, because modified spars have certain reinforcements and less interference, they are less prone to the subject cracking than are unmodified spars; therefore, cracking could be expected to occur in unmodified spars earlier than it could develop in the modified spars. In light of this, inspection intervals of fewer flight hours will be more effective for detecting cracking in unmodified one-piece spars in a timely manner.

As for Item 2, the FAA concurs that a repetitive inspection interval of 4,000 flight hours for unmodified two-piece spars and all modified spars is acceptable. In-service reports have shown that the 4,000 flight hour inspection interval is effective and appropriate for detecting cracking in a timely manner.

As for Item 3, the FAA does not agree with the suggestion that an inspection interval of 1,600 flight hours or 13

months, whichever is later, is appropriate for two-piece unmodified spars. First, as discussed previously, a calendar time (i.e., ''13 months'') is inappropriate in addressing problems associated with fatigue (such as the cracking addressed by this AD action). Second, while 1,600 flight hours is appropriate for unmodified one-piece spars, it is not appropriate for unmodified two-piece spars. The configuration of two-piece spars makes them inherently less prone to cracking than the one-piece spars, and the inspections that have been accomplished in accordance with AD 87–24–03 at the 4,000 flight hour interval have been shown to be effective in controlling cracking. Therefore, the FAA finds that the 4,000-flight hour interval for inspections of the unmodified two-piece spars is suitable.

In light of the information presented by commenters to this supplemental NPRM, as well as the reports of inspection findings, the FAA has determined that a different specific repetitive inspection interval for each of the various configurations of spars is appropriate. Taking this into account, the FAA has revised the final rule as follows:

For airplanes equipped with unmodified one-piece spars: If no cracking is found, the inspections are to be repeated every 1,600 flight hours. (This interval is unchanged from that previously required by AD 84–22–02.)

For airplanes equipped with modified one-piece spars: If no cracking is found, the inspections are to be repeated every 4,000 fight hours.

For airplanes equipped with unmodified two-piece spars: If no cracking is found, the inspections are to be repeated every 4,000 flight hours. (This interval is unchanged from that previously required by AD 87–24–03.)

For airplanes equipped with modified two piece spars: If no cracking is found, the inspections are to be repeated every 4,000 flight hours.

For all configurations: If cracking is found during any inspection and subsequently is stop-drilled, the inspection is repeated within 1,600 flight hours after stop-drilling, and the terminating modification is required to be accomplished within 3,200 flight hours after stop-drilling. (This provision is not changed from what was proposed in the notice.)

The FAA has determined that this change—providing for continuing inspections in lieu of mandatory terminating action—will not compromise safety, since the quality and timeliness of the repeated inspections will ensure that cracking will be detected before it can propagate to critical levels. Additionally, the FAA has determined that this change represents merely an optional method of compliance with the rule as it was originally proposed. The optional procedures will not impose an additional burden on any operator. They are a logical outgrowth of the notice that do not necessitate providing an additional opportunity for public comment.

Correction of Typographical Errors

The FAA has been advised that, in certain sections of the notice, the numbers of the applicable service bulletins were incorrectly cited. The FAA acknowledges these typographical errors and has revised the final rule to specify the correct Boeing Service Bulletin numbers of: 727–55–0087 and 727–55–0089.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,631 Model 727 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,166 airplanes of U.S. registry will be affected by this proposed AD.

The inspections will take approximately 17 work hours per airplane to accomplish (this includes the time required to gain access, remove parts, inspect, install, and perform functional testing), at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection requirements of this AD on U.S. operators is estimated to be $1,189,320, or $1,020 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

For operators who elect to install the optional terminating modification, it will take approximately 430 work hours per airplane to accomplish, at an average labor rate of $60 per work hours. Required parts will cost approximately $8,580 per airplane. Based on these figures, the cost impact of the optional modification is estimated to be $34,380 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–4951 (59 FR 45743, November 20, 1984), and amendment 39–5769 (52 FR 43742, November 16, 1987), and by adding a new airworthiness directive (AD), amendment 39–9542, to read as follows:

96–06–05 Boeing: Amendment 39–9542. Docket 94–NM–179–AD. Supersedes AD 84–22–02, amendment 39–4951; and AD 87–24–03, amendment 39–5769.

Applicability: Model 727 series airplanes, line numbers 1 through 1832 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (j) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent excessive free play of the elevator control tab and possible tab flutter, accomplish the following:

(a) For airplanes on which the modification or repair described in Boeing Service Bulletin 727–55–0085, dated August 31, 1984 (specified as terminating action in AD 84–22–02, amendment 39–4951), has not been accomplished and the repetitive inspections required by AD 84–22–02 have not been initiated: Prior to the accumulation of 8,000 total flight hours since date of manufacture, or within 300 flight hours after the effective date of this AD, whichever occurs later, perform a visual inspection to detect cracks and loose hinge brackets of the elevator rear spar in the area along the upper and lower edges at the shear plate, in accordance with Boeing Service Bulletin 727–55–0089, dated June 29, 1995. Then accomplish the follow-on actions (i.e., repetitive inspections, stop-drilling, modification) in accordance with that service bulletin, at the times specified as follows .

Note 2: AD 84–22–02 pertains to the one-piece elevator rear spar.

(1) Repeat the visual inspection thereafter at intervals not to exceed 1,600 flight hours.

(2) If any crack is detected and stop-drilled as a result of any inspection required by this paragraph, accomplish the requirements of paragraph (g) of this AD at the times specified in that paragraph.

(b) For airplanes on which the modification or repair described in Boeing Service Bulletin 727–55–0085, dated August 31, 1984 (specified as terminating action in AD 84–22–02, amendment 39–4951), has not been accomplished and the repetitive inspections required by AD 84–22–02 have been initiated: Accomplish either paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) If no crack has been detected as a result of inspections required by AD 84–22–02: Within 1,600 flight hours after the last inspection required by that AD, perform a visual inspection to detect cracks and loose brackets of the elevator rear spar in the area along the upper and lower edges at the shear plate, in accordance with the Boeing Service Bulletin 727–55–0089, dated June 29, 1995. Accomplish follow-on actions (i.e., repetitive inspection, stop-drilling, modification) in accordance with that service bulletin, at the times specified as follows:

(i) Repeat the visual inspection thereafter at intervals not to exceed 1,600 flight hours.

(ii) If any crack is detected and stop-drilled as a result of any inspection required by this paragraph, accomplish the requirements of paragraph (g) of this AD at the times specified in that paragraph.

(2) If any crack has been stop-drilled in accordance with AD 84–22–02, accomplish the requirements of paragraph (g) of this AD at the times specified in that paragraph.

(c) For airplanes on which the modification or repair described in Boeing Service Bulletin 727–55–0085, dated August 31, 1984 (specified as terminating action in AD 84–22–02, amendment 39–4951), has been accomplished: Within 4,000 flight hours after the effective date of this AD, perform a visual inspection to detect cracks and loose hinge brackets of the elevator rear spar in the area along the upper and lower edges at the shear plate, in accordance with Boeing Service Bulletin 727–55–0089, dated June 29, 1995. Accomplish follow-on actions (i.e., repetitive inspections, stop-drilling, modification) in accordance with that service bulletin, at the times specified as follows:

(1) Repeat the visual inspection thereafter at intervals not to exceed 4,000 flight hours.

(2) If any crack is detected and stop-drilled as a result of any inspection required by this paragraph, accomplish the requirements of paragraph (g) of this AD at the times specified in that paragraph.

(d) For airplanes on which the modification or repair described in Boeing Service Bulletin 727–55–087, dated June 20, 1986 (specified as terminating action in AD 87–24–03, amendment 39–5769), has not been accomplished and the repetitive inspections required by AD 87–24–03 have not been initiated: Accomplish the requirements of paragraph (d)(1) of this AD at the earliest of the times specified in paragraph (d)(2).

Note 3: AD 87–24–03 pertains to the two-piece elevator rear spar.

(1) Perform a visual inspection to detect cracks and loose hinge brackets of the elevator rear spar in the area along the upper and lower edges at the shear plate, at the earliest of the times specified in paragraph (d)(2) of this AD, and in accordance with Boeing Service Bulletin 727–55–0089, dated June 29, 1995. Accomplish follow-on actions (i.e., repetitive inspection, stop-drilling, modification) in accordance with that service bulletin, at the times specified as follows:

(i) Repeat the visual inspection thereafter at intervals not to exceed 4,000 flight hours.

(ii) If any crack is detected and stop-drilled as a result of any inspection required by this paragraph, accomplish the requirements of paragraph (g) of this AD at the times specified in that paragraph.

(2) Accomplish the initial visual inspection required by paragraph (d)(1) of this AD at the earliest of the following times:

(i) Prior to the accumulation of 27,000 total flight hours since date of manufacture, or within 4,000 flight hours after December 24, 1987 (the effective date of 87–24–03, amendment 39–5769), whichever occurs later; or

(ii) Prior to the accumulation of 12,000 total flight hours since date of manufacture, or within 4,000 flight hours after the effective date of this AD, whichever occurs later; or

(iii) Prior to the accumulation of 27,300 total flight hours since date of manufacture, or within 300 flight hours after the effective date of this AD, whichever occurs later.

(e) For airplanes on which the modification or repair described in Boeing Service Bulletin 727–55–087, dated June 20, 1986 (specified as terminating action in AD 87–24–03, amendment 39–5769), has not been accomplished and the repetitive inspections required by AD 87–24–03 have been initiated: Accomplish either paragraph (e)(1) or (e)(2) of this AD, as applicable.

(1) If no crack has been detected as a result of inspections required by AD 87–24–03: Within 4,000 flight hours after the last inspection required by that AD, perform a visual inspection to detect cracks and loose brackets of the elevator rear spar in the area along the upper and lower edges at the shear plate, in accordance with Boeing Service Bulletin 727–55–0089, dated June 29, 1995. Accomplish follow-on actions (i.e., repetitive inspection, stop-drilling, modification) in accordance with that service bulletin, at the times specified as follows:

(i) Repeat the visual inspection thereafter at intervals not to exceed 4,000 flight hours.

(ii) If any crack is detected and stop-drilled as a result of any inspection required by paragraph (e)(1) of this AD, accomplish the requirements of paragraph (g) of this AD at the times specified in that paragraph.

(2) If any crack has been detected and stop-drilled in accordance with AD 87–24–03, accomplish the requirements of paragraph (g) of this AD at the times specified in that paragraph.

(f) For airplanes on which the modification or repair described in Boeing Service Bulletin 727–55–087, dated June 20, 1986 (specified as terminating action in AD 87–24–03, amendment 39–5769), has been accomplished: Within 4,000 flight hours after the effective date of this AD, perform a visual inspection to detect cracks and loose hinge brackets of the elevator rear spar in the area along the upper and lower edges at the shear plate, in accordance with Boeing Service Bulletin 727–55–0089, dated June 29, 1995. Accomplish follow-on actions (i.e., repetitive inspection, stop-drilling, modification) in accordance with the service bulletin, at the times specified as follows:

(1) Repeat the visual inspection thereafter at intervals not to exceed 4,000 flight hours.

(2) If any crack is detected and stop-drilled as a result of any inspection required by this paragraph, accomplish the requirements of paragraph (g) of this AD at the times specified in that paragraph.

(g) If any crack is detected and stop-drilled in accordance with paragraph (a)(2), (b)(1)(ii), (b)(2), (c)(2), (d)(1)(ii), (e)(1)(ii), (e)(2), or (f)(2) of this AD, accomplish the following:

(1) Within 1,600 flight hours after stop-drilling, perform a visual inspection to detect cracks and loose hinge brackets of the elevator rear spar in the area along the upper and lower edges at the shear plate, and accomplish follow-on actions (i.e., stop-drilling, modification) in accordance with the service bulletin. If any crack growth is detected after stop-drilling, prior to further flight, modify the elevator rear spar in accordance with Part II of the

Accomplishment Instructions of Boeing Service Bulletin 727–55–0089, dated June 29, 1995. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of this AD.

(2) Within 3,200 flight hours after stop-drilling, modify the elevator rear spar in accordance with Part II of the Accomplishment Instructions of Boeing Service Bulletin 727–55–0089, dated June 29, 1995. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of this AD.

(h) Modification of the elevator rear spar in accordance with Part II of the Accomplishment Instructions of Boeing Service Bulletin 727–55–0089, dated June 29, 1995, constitutes terminating action for the requirements of this AD.

(i) 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.

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(k) The actions shall be done in accordance with Boeing Service Bulletin 727–55–0089, dated June 29, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(l) This amendment becomes effective on April 22, 1996.

Issued in Renton, Washington, on March 12, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–6391 Filed 3–20–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–22–AD; Amendment 39–9543; AD 96–06–06]

Airworthiness Directives; Boeing Model 747–100, -200, -300, and SP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–100, -200, -300, and SP series airplanes, that requires revising the Airplane Flight Manual (AFM) to prohibit the use of the autoland function. This amendment also requires installation of a diode and a marker on certain shelves and making wiring changes to the flight mode annunciator of the autopilot/flight director system, which terminates the requirements for the AFM limitation. This amendment is prompted by a report that the flightcrew was unaware of the configuration of the autoland system during landing. The actions specified by this AD are intended to ensure flightcrew awareness of the configuration of the autoland system in the event of a change from fail-operational to fail-passive mode.

DATES: Effective April 22, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 22, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Hania Younis, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2764; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747–100,-200, -300, and SP series airplanes was published in the Federal Register as a supplemental notice of proposed rulemaking on January 23, 1996 (61 FR 1722). That action proposed to require:

1. revising the Airplane Flight Manual (AFM) to prohibit the use of the autoland function;

2. installing a diode and a marker on shelves;

3. making wiring changes to the flight mode annunciator (FMA) of the autopilot/flight director system, which would terminate the requirements for the AFM revision; and

4. conducting follow-on operational tests.

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

The commenter supports the proposed rule.

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

There are approximately 179 Boeing Model 747–100, –200, –300, and SP series airplanes of the affected design in the worldwide fleet. The FAA estimates that 12 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required revision to the AFM, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $720, or $60 per airplane.

It will take approximately 10 work hours per airplane to accomplish the required installation and operational test, at an average labor rate of $60 per work hour. Required parts will cost approximately $613 per airplane. Based on these figures, the cost impact of these requirements on U.S. operators is estimated to be $14,556, or $1,213 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

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

96–06–06 Boeing: Amendment 39–9543. Docket 95–NM–22–AD.

Applicability: Model 747–100, –200, –300, and SP series airplanes, equipped with triple channel autoland autopilots; as listed in Boeing Alert Service Bulletin 747–22A2212, Revision 1, dated April 27, 1995, and Boeing Alert Service Bulletin 747–22A2213, Revision 2, dated June 22, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure flightcrew awareness of the configuration of the autoland system in the event of a change from fail-operational to fail-passive mode, accomplish the following:

(a) Within 3 months after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

Pay close attention to all 3 NAV receiver flags immediately after FLARE ARM is annunciated on the FMA's. If there is a flag on any NAV receiver, the corresponding autopilot channel must be disconnected; the approach must be down-graded to dual channel, CAT II configuration; and the autopilot must be disconnected prior to landing.

(b) Within 18 months after the effective date of this AD, install a diode and a marker on the E1–4, E1–5, and E1–6 shelves, and make wiring changes to the flight mode annunciator of the autopilot/flight director system, in accordance with Boeing Alert Service Bulletin 747–22A2212, Revision 1, dated April 27, 1995; or Boeing Alert Service Bulletin 747–22A2213, Revision 1, dated April 27, 1995, or Revision 2, dated June 22, 1995; as applicable. After this installation and wiring change is accomplished, the AFM limitation required by paragraph (a) of this AD may be removed from the AFM.

(c) Prior to further flight after accomplishment of paragraph (b) of this AD, perform an operational test of the newly installed diodes, in accordance with Boeing Alert Service Bulletin 747–22A2212, Revision 1, dated April 27, 1995; or Boeing Alert Service Bulletin 747–22A2213, Revision 1, dated April 27, 1995, or Revision 2, dated June 22, 1995; as applicable. Thereafter, repeat the operational test at intervals not to exceed 20,000 flight hours.

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

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

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

(f) The installation, wiring changes and operational tests shall be done in accordance with Boeing Alert Service Bulletin 747–22A2212, Revision 1, dated April 27, 1995; Boeing Alert Service Bulletin 747–22A2213, Revision 1, dated April 27, 1995, or Boeing Alert Service Bulletin 747–22A2213, Revision 2, dated June 22, 1995; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(g) This amendment becomes effective on April 22, 1996.

Issued in Renton, Washington, on March 12, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–6390 Filed 3–20–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–164–AD; Amendment 39–9544; AD 96–06–07]

Airworthiness Directives; British Aerospace Model BAC 1–11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all British Aerospace Model BAC 1–11 200 and 400 series airplanes, that currently requires visual inspections to detect cracks in the flight deck canopy area, and repair, if necessary. This amendment reduces the inspection threshold and repetitive inspection interval, and identifies specific structural members to be inspected. This amendment also requires eddy current inspections to detect cracks of the top sill members at station 82.5, and replacement of cracked parts with new parts, or repair of the top sill members. This amendment is prompted by reports of additional cracking found in the structural members in the flight deck canopy area of the affected airplanes. The actions specified by this AD are intended to ensure that cracking in the flight deck canopy area is detected and corrected in a timely manner; such cracking could result in reduced structural integrity of the cockpit frame and the adjacent fuselage structure.

DATES: Effective April 22, 1996.

The incorporation by reference of British Aerospace Alert Service Bulletin 53–A–PM5994, Issue 3, dated April 8, 1993, listed in the regulations is approved by the Director of the Federal Register as of April 22, 1996.

The incorporation by reference of British Aerospace Alert Service Bulletin 53–A–PM5994, Issue 2, dated June 5,

1990, listed in the regulations was approved previously by the Director of the Federal Register as of February 25, 1991 (56 FR 1569, January 16, 1991).

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, Airbus Limited, P.O. Box 77, Bristol BS99 7AR, England. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 91–02–12, amendment 39–6861 (56 FR 1569, January 16, 1991), which is applicable to all British Aerospace Model BAC 1–11 200 and 400 series airplanes, was published in the Federal Register on January 3, 1996 (61 FR 131). The action proposed to supersede AD 91–02–12 to continue to require repetitive visual inspections to detect cracks in the flight deck canopy area, and repair, if necessary. However, it also proposed to:

1. reduce the inspection threshold and repetitive inspection interval,

2. identify specific structural members to be inspected,

3. require repetitive eddy current inspections to detect cracks of the top sill members at station 82.5, and

4. require replacement of cracked parts with new parts, or repair of the top sill members.

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

There are approximately 31 Model BAC 1–11 200 and 400 series airplanes of U.S. registry that will be affected by this AD.

The actions that are currently required by AD 91–02–12 take approximately 18 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the actions currently required is estimated to be $33,480, or $1,080 per airplane.

The new actions that are required by this new AD will take approximately 19 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the new requirements of this AD is estimated to be $35,340, or $1,140 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—Airworthiness Directives

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6861 (56 FR 1569, January 16, 1991), and by adding a new airworthiness directive (AD), amendment 39–9544, to read as follows:

96–06–07 British Aerospace Airbus Limited (Formerly British Aerospace Commercial Aircraft Limited, British Aerospace Aircraft Group): Amendment 39–9544. docket 94–NM–164–AD. Supersedes AD 91–02–12, Amendment 39–6861.

Applicability: All Model BAC 1–11 200 and 400 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 as indicated, unless accomplished previously.

To prevent reduced structural integrity of the cockpit frame and the adjacent fuselage structure, accomplish the following:

(a) Prior to the accumulation of 30,000 total landings, or within 6 months after February 25, 1991 (the effective date of AD 91–02–12, amendment 39–6861), whichever occurs later; and thereafter at intervals not to exceed 5,000 landings: Perform a visual inspection to detect cracks of the flight deck canopy area, in accordance with British Aerospace Alert Service Bulletin 53–A–PM5994, Issue 2, dated June 5, 1990; or Issue 3, dated April 8, 1993. Pay particular attention to the top sill joint strap, the top sill intercostal, the frame at Station 113, and the top sill boom and web. Repeat this inspection until the inspections required by paragraph (c) of this AD are accomplished. After the effective date of this AD, the inspection shall be accomplished only in accordance with Issue 3 of the alert service bulletin.

(b) If any crack is found during the inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Following accomplishment of the repair, repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 5,000 landings until the inspections required by paragraph (c) of this AD are accomplished.

(c) Perform a detailed visual inspection to detect cracks of the top sill joint strap at station 82.5, of the frame at station 113, and of the frame at station 160.5 (left-hand side only) between stringers 13 and 15; and an eddy current inspection to detect cracks of the top sill members at station 82.5. Perform these inspections in accordance with British Aerospace Airbus Limited Alert Service Bulletin 53–A–PM5994, Issue 3, dated April

8, 1993, at the time specified in paragraph (c)(1) or (c)(2) of this AD, as applicable. Accomplishment of these inspections terminates the repetitive inspection requirement of paragraph (a) of this AD.

(1) For airplanes operating at a maximum cabin differential pressure not exceeding 7.5 pounds per square inch (psi): Perform the inspections at the later of the times specified in paragraphs (c)(1)(i) and (c)(1)(ii) of this AD. Thereafter, repeat these inspections at intervals not to exceed 5,000 landings or 7,500 hours time-in-service, whichever occurs first.

(i) Prior to the accumulation of 20,000 total landings since date of entry into service; or

(ii) Within 1,200 landings or 12 months after the effective date of this AD, whichever occurs later.

(2) For airplanes operating at a maximum cabin differential pressure greater than 7.5 psi, but not exceeding 8.2 psi, including those airplanes having incorporated British Aerospace Airbus Limited Modification PM3187: Perform the inspections at the later of the times specified in paragraphs (c)(2)(i) and (c)(2)(ii) of this AD. Thereafter, repeat these inspections at intervals not to exceed 3,500 landings or 5,250 hours time-in-service, whichever occurs first.

(i) Prior to the accumulation of 14,000 total landings since date of entry into service; or

(ii) Within 800 landings or 12 months after the effective date of this AD, whichever occurs later.

Note 2: British Aerospace Airbus Limited Modification PM3187 increases the cabin differential pressure from the normal 7.5 psi to 8.2 psi. If Modification PM3187 has been incorporated on the airplane, that airplane is considered to be subject to the requirements of paragraph (c)(2) of this AD.

(d) If any crack is found during any inspection required by paragraph (c) of this AD, prior to further flight, accomplish the requirements of paragraph (d)(1), (d)(2), or (d)(3), as applicable.

(1) For cracking of the joint strap, doubler, or angle at the sill joint at station 82.5: Replace the cracked part with a new part in accordance with British Aerospace Airbus Limited Alert Service Bulletin 53–A–PM5994, Issue 3, dated April 8, 1993.

(2) For cracking of the frame at station 113: Repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113.

(3) For cracking of the frame at station 160.5: Repair in accordance with the Structural Repair Manual, as specified in British Aerospace Airbus Limited Alert Service Bulletin 53–A–PM5994, Issue 3, dated April 8, 1993.

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

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

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

(g) The inspections shall be done in accordance with British Aerospace Alert Service Bulletin 53–A–PM5994, Issue 2, dated June 5, 1990; or British Aerospace Alert Service Bulletin 53–A–PM5994, Issue 3, dated April 8, 1993. The incorporation by reference of British Aerospace Alert Service Bulletin 53–A–PM5994, Issue 2, dated June 5, 1990, was approved previously by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of February 25, 1991 (56 FR 1569, January 16, 1991). The incorporation by reference of British Aerospace Alert Service Bulletin 53–A–PM5994, Issue 3, dated April 8, 1993, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, Airbus Limited, P.O. Box 77, Bristol BS99 7AR, England. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on April 22, 1996.

Issued in Renton, Washington, on March 12, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–6386 Filed 3–20–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 93–SW–26–AD; Amendment 39–9539; AD 96–06–02]

Airworthiness Directives; The Enstrom Helicopter Corporation Model F–28A, F–28C, F–28C–2, 280, and 280C Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to The Enstrom Helicopter Corporation Model (Enstrom) F–28A, F–28C, 280, and 280C helicopters, that currently requires an initial and repetitive visual inspections of the upper swashplate bearings for corrosion, and replacement of defective upper swashplate bearings with airworthy bearings. This amendment requires that the visual inspections apply to both the upper and lower swashplate bearings (bearings); expands the applicability to include the Model F–28C–2 helicopter; limits the applicability to those affected helicopters manufactured prior to January 1, 1981; establishes a retirement life of 1,200 hours time-in-service for certain bearings; and provides a corrected upper swashplate bearing part number. This amendment is prompted by the necessity to require visual inspections of the lower swashplate bearings; to expand the applicability to include the Model F–28C–2 helicopter; to establish a retirement life for certain bearings; and to correct the upper swashplate bearing part number from the existing AD. The actions specified by this AD are intended to prevent failure of the bearings and subsequent loss of control of the helicopter.

DATES: Effective April 25, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 25, 1996.

ADDRESSES: The service information referenced in the proposed rule may be obtained from The Enstrom Helicopter Corporation, Twin County Airport, P.O. Box 490, Menominee, Michigan 49858. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Joe McGarvey, Aerospace Engineer, Airframe Branch, Chicago Aircraft Certification Office, Small Airplane Directorate, FAA, 2300 East Devon Avenue, Room 232, Des Plaines, Illinois 60018, telephone (708) 294–7136, fax (708) 294–7834.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 76–06–11, Amendment 39–2560, (41 FR 13906, April 1, 1976), which is applicable to Enstrom Model F–28A, F–28C, 280, and 280C helicopters manufactured prior to January 1, 1981, was published in the Federal Register on July 6, 1994 (59 FR 34584). That action proposed to require visual inspections of both the upper and lower swashplate bearings; to expand the applicability to include the Model F–28C–2 helicopter which was omitted in AD 76–06–11; to establish a retirement life of 1,200 hours time-in-service for certain upper and lower swashplate bearings; and to correct the upper swashplate bearing part number in the existing AD. That action also proposed an optional terminating action from the requirements of the AD and

limited the applicability of the AD requirements to those affected model helicopters manufactured prior to January 1, 1981.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for editorial changes and adding explanatory Note 1, relating to the scope of the applicability statement when modifications, alterations, or repairs have been made in the area subject to the requirements of the AD. Additionally, the FAA has revised the proposed estimated average labor rate from $55 per work hour to an estimated average labor rate of $60 per work hour in the preamble portion of this final rule. This revision will increase the estimated total cost impact of the AD from $1,105,500 to $1,122,000. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 660 helicopters of U.S. registry will be affected by this AD, that it will take approximately 5 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,400 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,122,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–2560 (41 FR 13906, April 1, 1976), and by adding a new airworthiness directive (AD), Amendment 39–9539, to read as follows:

[AD 96–06–02] The Enstrom Helicopter Corporation: Amendment 39–9539. Docket No. 93–SW–26–AD. Supersedes AD 76–06–11, Amendment 39–2560.

Applicability: Model F–28A, F–28C, F–28C–2, 280, and 280C helicopters, manufactured prior to January 1, 1981, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the upper and lower swashplate bearings (bearings) and subsequent loss of control of the helicopter, accomplish the following:

(a) Within the next 10 hours time-in-service (TIS) after the effective date of this AD, and thereafter at intervals not to exceed 100 hours TIS since the last inspection, perform a visual inspection of the upper swashplate bearing, part number (P/N) Z993L13X3B, bearing number SKF 6013–RS, or ECD013–13, and lower swashplate bearing, P/N 5201SBKZZ–ABEC, or ECD009–11, for corrosion as follows:

(1) Lower the swashplate to lowest position with the collective control.

(2) Remove the plastic bearing seals from the upper and lower swashplate bearings using a blunt scribe.

(3) Using an inspection mirror, visually inspect the bearings for grease lubricant and any evidence of corrosion. Rotate the bearings and housing to reposition balls and race for complete inspection. For bearings found free of corrosion or defects, repack them with Exxon ANDOK–B grease or any MIL–G–18709A grease, and reinstall the bearing seals in accordance with the applicable maintenance manual.

(b) Replace any unairworthy bearing with an airworthy bearing in accordance with the applicable maintenance manual.

(c) Before further flight, after the effective date of this AD, remove all upper and lower swashplate bearings having 1,200 hours or more TIS, and replace them with airworthy bearings. For bearings with less than 1,200 hours TIS on the effective date of this AD, replace the bearings on or before attaining 1,200 hours TIS.

(d) Installation of revised upper swashplate bearing housing, P/N 28–16108–2, and lower swashplate bearing housing, P/N 28–16361–1, that are equipped with grease fittings and integral bearing shields as described in The Enstrom Helicopter Corporation Service Information Letter No. 0110, Revision B, dated March 18, 1993, constitutes terminating action for the requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Chicago Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Chicago 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 Chicago Aircraft Certification Office.

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

(g) The optional replacement permitted by paragraph (d) shall be done in accordance with The Enstrom Helicopter Corporation Service Information Letter No. 0110, Revision B, dated March 18, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The Enstrom Helicopter Corporation, Twin County Airport, P.O. Box 490, Menominee, Michigan 49858. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on April 25, 1996.

Issued in Fort Worth, Texas, on March 11, 1996.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 96–6420 Filed 3–20–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–SW–16–AD; Amendment 39–9541, AD 96–06–04]

Airworthiness Directives; Bell Helicopter Textron, A Division of Textron Canada, Ltd. Model 206A and 206B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Bell Helicopter Textron, A Division of Textron Canada, Ltd., (BHTC) Model 206A and 206B helicopters, that currently requires an inspection of the main transmission input driveshaft assembly (driveshaft) at intervals of 300 hours time-in-service (TIS); the application of a zinc chromate primer inspection visual aid; and, daily visual checks of the driveshaft. This amendment requires inspections of the driveshaft at intervals of 300 hours TIS; the application of a self-adhesive temperature indicator visual inspection aid; and, preflight visual owner/operator (pilot) checks of the driveshaft. This amendment is prompted by recent studies that indicate self-adhesive temperature indicators are a more reliable means of detecting overheat conditions on grease-lubricated couplings than the zinc chromate primers currently in use. The actions specified by this AD are intended to prevent failure of the driveshaft due to coupling wear or overheating, which could result in loss of power to the main rotor and a subsequent forced emergency landing.

DATES: Effective April 25, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 25, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from BHTC, 12,800 Rue de l'Avenir, Mirabel, Quebec, Canada J7J1R4, ATTN: Product Support Engineering Light Helicopters. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Jurgen Priester, Aerospace Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, Fort Worth, Texas 76193–0170, telephone (817) 222–5159; fax (817) 222–5959.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 81–04–08, Amendment 39–4037 (46 FR 12469, February 17, 1981), which is applicable to BHTC Model 206A and 206B helicopters, was published in the Federal Register on September 8, 1995 (60 FR 46790). That action proposed to require inspections of the driveshaft at intervals of 300 hours TIS; the application of a self-adhesive visual over-temperature indicator; and, preflight visual checks of the driveshaft. The checks described in the proposal (before the first flight of each day) may be performed by an owner/operator (pilot), but must be entered into the aircraft records showing compliance with the preflight check requirements of this AD in accordance with sections 43.11 and 91.417(a)(2)(v) of the Federal Aviation Regulations. The notice proposed to allow a pilot to perform these checks because they involve only a visual check for grease leakage, overheating, and security of the clamps and bolts used to attach the driveshaft to transmission and engine couplings. These checks can be performed equally well by a pilot or a mechanic. They involve checking items similar to those items that a pilot checks during a preflight check. The notice proposed that a mechanic inspect the driveshaft and driveshaft couplings at intervals of 300 hours TIS.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. However, the FAA has reorganized paragraphs (a) and (b) to separate the requirements of the visual checks that may be performed by the pilot from the required corrective actions that must be performed by a mechanic if certain conditions are discovered during the visual check. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the exception of organizational changes noted and various editorial changes. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 4,312 helicopters of U.S. registry will be affected by this AD, that it will take approximately one and one-half work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no charge, but installation materials will cost approximately $10 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $431,200.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC App. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–4037 (46 FR

12469, February 17, 1981), and by adding a new airworthiness directive (AD), Amendment 39- , to read as follows:

AD 96–06–04 Bell Helicopter Textron, a Division of Textron Canada, Ltd.: Amendment 39–9541, Docket No. 94–SW–16–AD. Supersedes AD 81–04–08, Amendment 39–4037.

Applicability: Model 206A and 206B helicopters, certificated in any category.

Note: 1:

This AD applies to each helicopter 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 helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main transmission input driveshaft assembly (driveshaft) due to coupling wear or overheating, which could result in loss of power to the main rotor and a subsequent forced emergency landing, accomplish the following:

(a) Before the first flight of each day after the effective date of this AD, visually check the driveshaft, part number (P/N) 206–040–100–13, for: (1) grease leakage from the driveshaft couplings, P/N 206–040–108–005; and (2) visual damage and security of the clamps and bolts used to attach the driveshaft to the transmission and engine couplings. After compliance with paragraph (d) of this AD, also check the self-adhesive over-temperature indicators (over-temperature indicators) for overheating, deterioration, debonding, or discoloration. The visual checks may be performed by an owner/operator (pilot) holding at least a private pilot certificate, and must be entered into the aircraft records showing compliance with the visual check of this AD in accordance with sections 43.11 and 91.417(a)(2)(v) of the Federal Aviation Regulations.

(b) If any discrepancies are discovered as a result of the visual check performed in paragraph (a), accomplish the following before further flight:

(1) If there is any grease leakage or any indications of overheating, disassemble and inspect the driveshaft in accordance with the applicable maintenance manual and replace the over-temperature indicators in accordance with Part III of the Accomplishment Instructions of Bell Helicopter Textron, Inc., Alert Service Bulletin (ASB) No. 206–93–76, Revision B, dated September 6, 1994.

(2) If any ''dot'' on an over-temperature indicator has changed color to black, accomplish the corrective action in accordance with TABLE I and the accompanying Notes in ASB No. 206–93–76, Revision B, dated September 6, 1994.

(3) If there are any deteriorated, debonded, or discolored over-temperature indicator(s) that would prevent interpretation of the indicating ''dots'', replace those over-temperature indicator(s) in accordance with Part III of the Accomplishment Instructions of ASB No. 206–93–76, Revision B, dated September 6, 1994. If only one over-temperature indicator is missing, and no ''dot'' on any other over-temperature indicator on the same coupling is discolored or shows mechanical damage or degradation of the epoxy overcoating, the helicopter may be returned to service.

(4) If there are any loose or damaged clamps or bolts, secure the loose clamps or bolts and replace the damaged clamps or bolts in accordance with the applicable maintenance manual.

(c) Inspect and lubricate the driveshaft assembly, P/N 206–040–100–13, and driveshaft couplings, P/N 206–040–108–005, in accordance with the helicopter's maintenance manual and according to the compliance schedule that follows, and thereafter, inspect and lubricate at intervals not to exceed 300 hours time-in-service (TIS):

(1) For helicopters with 250 hours TIS or more, compliance is required within the next 50 hours TIS; or,

(2) For helicopters with less than 250 hours TIS, compliance is required prior to attaining 300 hours TIS.

(d) Install the over-temperature indicators at the next 300 hours TIS driveshaft coupling inspection and lubrication in accordance with Part I of the Accomplishment Instructions of ASB No. 206–93–76, Revision B, dated September 6, 1994.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

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

(g) The inspections, maintenance and installation of over-temperature indicators shall be done in accordance with ASB No. 206–93–76, Revision B, dated September 6, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron, A Division of Textron Canada, Ltd., 12,800 Rue L'Avenir, Mirabel, Quebec, Canada J7J1R4, ATTN: Product Support Engineering Light Helicopters. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on April 25, 1996.

Issued in Fort Worth, Texas, on March 11, 1996.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 96–6419 Filed 3–20–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–47–AD; Amendment 39–9545; AD 96–06–08]

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –15, –30, and –40 Series Airplanes, and Model KC–10A (Military) Airplane

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10–10, –15, –30, and –40 series airplanes, and Model KC–10A (military) airplanes. This amendment requires inspection(s) to detect cracks of the attach bolts of the front spar support fitting of each wing, and replacement of attach bolts with ones that are corrosion resistant. This amendment is prompted by a report of failure of the attach bolts of the front spar fitting as a result of corrosion pitting. The actions specified by this AD are intended to prevent such stress corrosion, which could lead to the failure of the attach bolts of the front spar; this situation could result in reduced structural integrity of the wing.

DATES: Effective April 22, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 22, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton,

Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Cecil, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (310) 627–5322; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10–10, –15, –30, and –40 series airplanes, and Model KC–10A (military) airplanes, was published in the Federal Register on August 30, 1995 (60 FR 45108). That action proposed to require inspection(s) to detect cracks of the attach bolts of the front spar support fitting of each wing, and replacement of attach bolts with ones that are corrosion resistant.

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

One commenter supports the proposal.

Another commenter requests that the proposal be revised to give operators ''credit'' for having accomplished the initial required ultrasonic inspection prior to the effective date of the final rule. This commenter is concerned that, if such credit is not specified in the AD, operators may be required to perform duplicate inspections needlessly.

The FAA acknowledges this commenter's concerns, and finds that some clarification is necessary. Operators are always given credit for work accomplished prior to the effective date of an AD by means of the phrase in the compliance section of the rule that states, ''Required as indicated, unless accomplished previously.'' Since the ultrasonic inspection required by paragraph (a) of this AD is to be accomplished specifically in accordance with McDonnell Douglas DC–10 Service Bulletin 57–126, which was released on October 30, 1992, the possibility exists that some operators may have accomplished the initial ultrasonic inspection some years ago when the service bulletin was originally issued. For those operators, the ''unless accomplished previously'' phrase is intended to ensure that they not conduct a duplicate initial inspection.

However, in light of this commenter's concerns, the FAA finds that the compliance time for repetitive inspections must be clarified. The intent of this AD is to establish a schedule of inspections that are to be conducted at 18-month intervals. Regardless of when the initial inspection was conducted, that inspection must be repeated within 18 months afterwards. Accordingly, paragraph (a) of the final rule has been revised to clarify that the initial inspection is required within 18 months after the effective date of the AD, unless it was accomplished previously within 18 months prior to the effective date. Paragraph (b) of the final rule has been clarified to specify that the inspection must then be repeated at an interval not to exceed 18 months after that initial inspection, and must be repeated again every 18 months after that.

One commenter states that the manufacturer has advised that it is developing revised procedures for accomplishment of the bolt replacement (which may include only partial replacement under certain conditions). The commenter requests that the FAA revise the proposed rule to make these new procedures available to affected operators.

The FAA concurs with the commenter's request. Since issuance of the proposal, the FAA has reviewed and approved McDonnell Douglas Service Bulletin DC1057–126, Revision 1, dated March 1, 1996. This revised service bulletin is essentially identical to the McDonnell Douglas DC–10 Service Bulletin 57–126, dated October 30, 1992, but provides procedures for replacing a minimum of 5 of the attach bolts of the front spar support fitting on each wing with corrosion-resistant attach bolts; and, at the next pylon removal after that replacement, replacing the remaining 1 attach bolt of the front spar support fitting on each wing. Accomplishment of the replacement of these six attach bolts eliminates the need for the repetitive inspections of them. These replacement procedures are identical to the procedures proposed in paragraph (b)(2) of the proposed rule. The FAA has revised the final rule to include the newly released (revised) service bulletin as an additional source of service information.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 420 Model DC–10–10, –15, –30, and –40 series airplanes, and Model KC–10A (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 237 airplanes of U.S. registry will be affected by this AD.

It will take approximately 6 work hours per airplane to accomplish the required inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection requirements of this AD on U.S. operators is estimated to be $85,230, or $360 per airplane, per inspection cycle.

It will take approximately 6 work hours per airplane to accomplish the required bolt replacement, at an average labor rate of $60 per work hour. Required parts will cost approximately $43,000 per airplane. Based on these figures, the cost impact of the replacement requirements of this AD on U.S. operators is estimated to be $10,276,320, or $43,360 per airplane.

The number of work hours indicated above does not include time for gaining access, removing and reinstalling engines, removing and reinstalling pylons, closing up, or performing functional checks. Additionally, it does not include time for preparation for the replacement, administrative functions, or nonproductive elapsed time.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has

been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

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

96–06–08 McDonnell Douglas: Amendment 39–9545. Docket 95–NM–47–AD.

Applicability: Model DC–10–10, –15, –30, and –40 series airplanes, and Model KC–10A (military) airplanes; as listed in McDonnell Douglas DC–10 Service Bulletin 57–126, dated October 30, 1992; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the wing, accomplish the following:

(a) Within 18 months after the effective date of this AD, unless previously accomplished within the last 18 months prior to the effective date of this AD, perform an ultrasonic inspection to detect cracks in the 6 attach bolts of the front spar support fitting of each wing, in accordance with McDonnell Douglas DC–10 Service Bulletin 57–126, dated October 30, 1992, or McDonnell Douglas Service Bulletin DC10–57–126, Revision 1, dated March 1, 1996.

(b) If no crack is detected on an attach bolt during the inspection specified in paragraph (a) of this AD, accomplish paragraphs (b)(1) and (b)(2) of this AD.

(1) Within 18 months after accomplishing the inspection specified in paragraph (a) of this AD, repeat the ultrasonic inspection, and continue to repeat it thereafter at intervals not to exceed 18 months, until the procedures required by paragraph (b)(2) of this AD are accomplished.

(2) Within 5 years after the effective date of this AD, replace a minimum of 5 of the attach bolts of the front spar support fitting on each wing with corrosion-resistant attach bolts, in accordance with the service bulletin. At the next pylon removal after that replacement, replace the remaining 1 attach bolt of the front spar support fitting on each wing. Accomplishment of the replacement constitutes terminating action for the repetitive inspection requirements of this AD for that attach bolt.

(c) If any crack is detected on an attach bolt during any inspection required by paragraph (a) or (b)(1) of this AD, prior to further flight, replace the cracked attach bolt with a corrosion-resistant attach bolt, in accordance with the service bulletin. Accomplishment of such replacement constitutes terminating action for the repetitive inspection requirements of this AD for that attach bolt only.

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

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

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

(f) The inspection and replacement procedures shall be done in accordance with McDonnell Douglas DC–10 Service Bulletin 57–126, dated October 30, 1992; or McDonnell Douglas Service Bulletin DC10–57–126, Revision 1, dated March 1, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on April 22, 1996.

Issued in Renton, Washington, on March 13, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–6542 Filed 3–20–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 96–NM–50–AD; Amendment 39–9546; AD 96–06–09]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to three Boeing Model 767 series airplanes, serial numbers 26847, 27048, and 27049. This action requires a functional check of the trailing edge flap drive bypass valve, and eventual replacement of the control valve module for the trailing edge flaps with an improved module. This amendment is prompted by reports of failure of the bypass valve motor in the control valve module of the trailing edge flaps due to hydraulic fluid contamination. The actions specified in this AD are intended to prevent such failure, which could result in loss of shutdown protection for the trailing edge flap drive; this condition could result in reduced controllability of the airplane in the event of uncommanded or asymmetrical flap motion.

DATES: Effective April 5, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 5, 1996.

Comments for inclusion in the Rules Docket must be received on or before May 20, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–50–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Susan Letcher, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington; telephone (206) 227–2670; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: On September 27, 1993, the FAA issued AD 93–19–05, amendment 39–8703 (58 FR 54940, October 25, 1993), which is applicable to Boeing Model 767 series airplanes, line positions 001 through 402 inclusive. That AD requires (initially) various functional checks of:

1. the leading edge slat shutoff valve,
2. the trailing edge flap drive bypass valve,
3. the leading edge slat long term shutoff control, and
4. the leading edge slat drive mechanical rigging.

In addition, that AD requires installation of terminating modifications for the required functional checks. One of these modifications involves replacing the bypass valve motor of the control valve module for the trailing edge flaps.

AD 93–19–05 was prompted by a report of an uncommanded slat extension during cruise, and several instances of an inoperative trailing edge flap bypass valve motor. These instances were attributed to hydraulic fluid in the bypass valve motor. The requirements of that AD are intended to prevent uncommanded deployment of leading edge slats, which could result in structural damage to the wing and consequent degradation of flight control. Additionally, the requirements of that AD are intended to ensure shutdown protection for the trailing edge flap drive in the event of uncommanded or asymmetrical flap motion.

Since the issuance of AD 93–19–05, the manufacturer has advised the FAA that three airplanes (those having serial numbers 26847, 27048, and 27049) were delivered on which the replacement of the bypass valve motor in the control valve module for the trailing edge flaps had not been accomplished during production. Those three airplanes were not included in the applicability of AD 93–19–05; however, they are subject to the same unsafe condition addressed by that AD. The FAA has determined that loss of shutdown protection for the trailing edge flap drive due to hydraulic fluid contamination of the bypass valve motor could occur on these three airplanes.

The FAA has reviewed and approved Boeing Service Bulletin 767–27A0094, Revision 5, dated June 9, 1994, which describes (among other actions) procedures to perform a one-time functional check of the bypass valve of the trailing edge flap drive.

The FAA has also reviewed and approved Boeing Service Bulletin 767–27–0138, dated August 17, 1995, which describes procedures for replacement of the control valve module for the trailing edge flaps with an improved module on the three airplanes having serial numbers 26847, 27048, and 27049. The bypass valve motor in the improved module was redesigned to ensure that the motor is hermetically sealed. Accomplishment of this replacement will prevent hydraulic fluid contamination.

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 767 series airplanes of the same type design, this AD is being issued to prevent loss of shutdown protection for the trailing edge flap drive, which could result in reduced controllability of the airplane in the event of uncommanded or asymmetrical flap motion. This AD requires a one-time functional check of the trailing edge flap drive bypass valve, and eventual replacement of the control valve module for the trailing edge flaps with an improved module. The actions are required to be accomplished in accordance with the service bulletins described previously. This AD applies only to airplanes having serial numbers 26847, 27048, and 27049.

[Note: The FAA's normal policy is that when an AD requires a substantive change, such as a change (expansion) in its applicability, the ''old'' AD is superseded by removing it from the system and a new AD is added. In the case of this AD action, the FAA normally would have proposed superseding AD 93–19–05 to expand its applicability to include the three additional affected airplanes. However, in reconsideration of the entire fleet size that would be affected by a supersedure action, and the consequent workload associated with revising maintenance record entries, the FAA has determined that a less burdensome approach is to issue a separate AD applicable only to the three additional airplanes. This AD does not supersede AD 93–19–05; airplanes listed in the applicability of AD 93–19–05 are required to continue to comply with the requirements of that AD. This AD is a separate AD action, and is applicable only to airplanes having serial numbers 26847, 27048, and 27049.]

Operators should note that the manufacturer's recommended compliance time for accomplishment of the functional check is within 400 flight hours after receipt of the service bulletin. While the FAA agrees that 400 flight hours would normally be an appropriate compliance time, this AD specifies a compliance time of 25 days after the effective date of this AD. This compliance time was developed by taking into account the date that the initial service bulletin recommended (September 28, 1989) for accomplishment of the actions and the time that has elapsed since that date. The FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, as well as the time necessary to perform the functional check (1 work hour). In light of these factors, the FAA finds 25 days to be an appropriate compliance time for initiating the required functional check.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–50–AD.'' The

postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

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

96–06–09 Boeing: Amendment 39–9546. Docket 96–NM–50–AD.

Applicability: Model 767 series airplanes, having serial number 26847, 27048, or 27049, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously. To prevent loss of shutdown protection for the trailing edge flap drive, which could result in reduced controllability of the airplane in the event of uncommanded or asymmetrical flap motion, accomplish the following:

(a) Within 25 days after the effective date of this AD, perform a one-time functional check to ensure that the bypass valve motor in the control valve module for the trailing edge flaps is operational, in accordance with Part II of the Accomplishment Instructions of Boeing Service Bulletin 767–27A0094, Revision 5, dated June 9, 1994. If a failed bypass valve motor is found, prior to further flight, accomplish the replacement required by paragraph (b) of this AD.

(b) Within 60 days after the effective date of this AD, replace the control valve module for the trailing edge flaps with an improved module having a redesigned bypass valve motor that is hermetically sealed, in accordance with Boeing Service Bulletin 767–27–0138, dated August 17, 1995.

(c) As of the effective date of this AD, no person shall install either a control valve module, part number S256T005–7, or a bypass valve, part number S256T005–4, on any airplane.

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

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

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

(f) The functional check shall be done in accordance with Boeing Service Bulletin 767–27A0094, Revision 5, dated June 9, 1994. The replacement shall be done in accordance with Boeing Service Bulletin 767–27–0138, dated August 17, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on April 5, 1996.

Issued in Renton, Washington, on March 13, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–6540 Filed 3–20–96; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 303

Rules and Regulations Under the Textile Fiber Products Identification Act

AGENCY: Federal Trade Commission.

ACTION: Final Rule.

SUMMARY: This document amends the Rules and Regulations under the Textile Fiber Products Identification Act (Textile Rules) by adding the International System of Units (SI metric system) equivalents beside the inch/pound unit measurements in Textile Rules 10, 21, 32, and 45 (16 CFR 303.10, 303.21, 303.32, and 303.45). These metrication amendments are required by Executive Order 12770 of July 25, 1991 and the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act.

EFFECTIVE DATE: March 21, 1996.

ADDRESSES: Requests for copies of this notice should be sent to Public Reference Branch, Room 130, Federal Trade Commission, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Bret S. Smart, Program Advisor, Los Angeles Regional Office, Federal Trade Commission, 11000 Wilshire Blvd., Suite 13209, Los Angeles, CA 90024, (310) 235–7890 or Edwin Rodriguez, Attorney, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3147.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Textile Fiber Products Identification Act (Textile Act), 15 U.S.C. 70 *et seq.*, requires marketers of covered textile products to mark each product with (1) The generic names and percentages by weight of the constituent fibers present in the textile product; (2) the name under which the manufacturer or other responsible company does business or, in lieu thereof, the registered identification number (RN) of such company; and (3) the name of the

country where the textile product was processed or manufactured. Furthermore, the Textile Act contains advertising and recordkeeping provisions. As authorized and directed by section 7(c) of the Textile Act, 15 U.S.C 70e(c), the Commission has promulgated the Textile Rules, which are set forth at 16 CFR Part 303.

As part of the Commission's systematic review of all current Commission rule, regulations, and guides, the Commission published a Federal Register notice on May 6, 1994, 59 FR 23646, seeking comments about the regulatory and economic costs and benefits of the Textile Rules. The notice also stated that the Commission proposed to amend Textile Rules 10, 21, 32, and 45 (16 CFR 303.10, 303.21, 303.32, and 303.45) to include the metric equivalents beside the inch/pound unit measurements already included in those Rules.

II. Metrication Amendments

In a separate notice, the Commission summarizes the results of its regulatory review of the Textile Rules, and seeks comment on whether it should make additional substantive amendments to the Rules. In this notice, the Commission announces adoption of the metrication amendments set out in the request for comments.

Currently, Rules 10, 21, 32, and 45 (16 CFR 303.10, 303.21, 303.32, and 303.45) include measurements expressed exclusively in inch/pound units. Under Executive Order 12770 of July 25, 1991, 56 FR 35801 (July 29, 1991), and the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. 205b, all federal agencies are required to use the SI metric system of measurement in all procurements, grants, and other business-related activities (which include rulemakings), except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms.

The proposed amendments to Rules 10, 21, 32, and 45 were set out in the regulatory review notice. Four of the twenty-eight comments submitted in response to the regulatory review expressed general support for the proposed metrication amendments.[1] The remaining twenty-four comments did not address these metrication amendments.

List of Subjects in 16 CFR Part 303

Labeling, Reporting and recordkeeping requirements, Textiles, Trade practices.

The metrication amendments are technical and non-substantive; they merely provide metric equivalents to the existing measurements expressed in inch/pound units and do not create any new requirements. Therefore, Rules 10, 21, 32, and 45 (16 CFR 303.10, 303.21, 303.32, and 303.45) are amended as set out below.

PART 303—RULES AND REGULATIONS UNDER THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACT

1. The authority citation for part 303 continues to read as follows:

Authority: 15 U.S.C. 70 *et seq.*

* * * * *

2. Section 303.10(b) is revised to read as follows:

§ 303.10 Fiber content of special types of products.

* * * * *

(b) Where drapery or upholstery fabrics are manufactured on hand-operated looms for a particular customer after the sale of such fabric has been consummated, and the amount of the order does not exceed 100 yards (91.44 m) of fabric, the required fiber content disclosure may be made by listing the fibers present in order of predominance by weight with any fiber or fibers required to be designated as ''other fiber'' or ''other fibers'' appearing last, as for example:

Rayon
Wool
Acetate
Metallic
Other fibers

* * * * *

3. Section 303.21(a)(1) is revised to read as follows:

§ 303.21 Marking of samples, swatches, or specimens and products sold therefrom.

(a) * * *

(1) If the samples, swatches, or specimens are less than two square inches (12.9 cm^2) in area and the information otherwise required to appear on the label is clearly, conspicuously, and non-deceptively disclosed on accompanying promotional matter in accordance with the Act and regulations.

* * * * *

4. Section 303.32 is revised to read as follows:

§ 303.32 Products containing reused stuffing.

Any upholstered product, mattress, or cushion which contains stuffing which has been previously used as stuffing in any other upholstered product, mattress, or cushion shall have securely attached thereto a substantial tag or label, at least 2 inches (5.08 cm) by 3 inches (7.62 cm) in size, and statements thereon conspicuously stamped or printed in the English language and in plain type not less than ⅓ inch (8.38 mm) high, indicating that the stuffing therein is composed in whole or in part of ''reused stuffing,'' ''secondhand stuffing,'' ''previously used stuffing,'' or ''used stuffing.''

5. Section 303.45(a)(1)(xv)) is revised to read as follows:

§ 303.45 Exclusions from the act.

(a) * * *

(1) * * *

(xv) Flags with heading or more than 216 square inches (13.9 dm^2) in size.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 96–6734 Filed 3–20–96; 8:45 am]

BILLING CODE 6750–01–M

[1] National Knitwear & Sportswear Association (1) p. 1, American Textile Manufacturers Institute (10) p. 6, Fieldcrest Cannon, Inc. (13) p. 6, and Milliken & Company (22) p. 6. The number in parentheses denotes the number assigned by the Office of the Secretary to the comment in the public record of comments received in the regulatory review of the Textile Rules.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Issuance of Notices Relating to Debarment; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the Federal Register of March 4, 1995 (61 FR 8214). The document published with an incorrect section number designation. This document corrects that error.

EFFECTIVE DATE: March 4, 1996.

FOR FURTHER INFORMATION CONTACT: LaJuana D. Caldwell, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

SUPPLEMENTARY INFORMATION: In the Federal Register of March 4, 1996 (61 FR 8214), FDA published a final rule that contained an error in the designation of a section. Section 5.99 was incorrectly designated as § 5.98. This document corrects that error.

In FR Doc. 96–4914, appearing on page 8214 in the Federal Register of Monday, March 4, 1996, the following corrections are made:

1. On page 8214, under ''**SUPPLEMENTARY INFORMATION**,'' in lines 14 and 29 ''§ 5.98'' is corrected to read ''§ 5.99''.

§ 5.31 [Corrected]

In § 5.31 *Petitions under part 10*, the following corrections are made:

2. On page 8215, in paragraphs (f)(1)(vi), (f)(2)(x), and (f)(8), ''5.98'' is corrected to read ''5.99''.

§ 5.98 [Redesignated]

3. § 5.98 *Issuance of notices relating to proposals and orders for debarment of an application to terminate debarment* the section number is redesignated as § 5.98.

Dated: March 14, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–6667 Filed 3–20–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 172

[Docket No. 87F–0179]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Olestra; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the Federal Register of January 30, 1996 (61 FR 3118). The document amended the food additive regulations to provide for the safe use of sucrose esterified with medium and long chain fatty acids (olestra) as a replacement for fats and oils. The document was published with some typographical errors. This document corrects those errors.

DATES: The regulation is effective January 30, 1996. Submit written comments on the labeling requirement (§ 172.867(c)) by April 1, 1996.

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: Helen R. Thorsheim, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3092.

In FR Doc. 96–1584, appearing on page 3118 in the Federal Register of Tuesday, January 30, 1996, the following corrections are made:

1. On page 3119, in the second column, in the first footnote, in the sixth line, the last word ''volum'' is corrected to read ''volume''; in the same column, in the second footnote, in the seventh line, ''FAc'' is corrected to read ''FAC''; and in the eighth line, the word ''meetins'' is corrected to read ''meetings''. On the same page, in the third column, in the third full paragraph, in the eleventh line, after the period, the plus sign is removed.

2. In the following places the paragraph symbol that printed inadvertently is removed: On page 3120, in the second column, in the third paragraph, in the nineteenth line, following the word ''at''; in the third column, in the first paragraph, in the fifteenth line, following the word ''in''; and in the same column, in the third paragraph, in the eighteenth line, following the word ''vitamins''; on page 3135, in the third column, in the third paragraph, at the beginning of the fourth line; on page 3166, in the third column, at the beginning of the twenty-first line; and on page 3169, in the third column, in the first paragraph, in the thirty-second line, following the word ''to''.

3. On page 3121, in the first column, in the sixth line, ''vitamin'' is corrected to read ''vitamins''.

4. On page 3124, in the first column, in the fourth full paragraph, in the third line, ''250 F'' is corrected to read ''250 °F''.

5. On page 3125, in the third column, in the second paragraph, in the twelfth line, following the word ''that'', the comma is removed.

6. On page 3126, in the third column, in the first full paragraph, in the eighteenth line, and on page 3127, in the first column, in the second paragraph, in the eleventh line, ''CO2'' is corrected to read ''CO_2''.

7. On page 3126, in the third column, in the first paragraph, in the twentieth line ''14C-sucrose'' is corrected to read ''^{14}C-sucrose''.

8. On page 3129, in the first column, in the tenth line, the closing parenthesis is removed following the word ''review'', and reinserted following ''NTP'', and in the same column, in the thirteenth footnote, beginning in the first line the words ''was chief'' are corrected to read ''was formerly chief''.

9. On page 3130, in the third column, in the second paragraph, in the twenty-third line, ''C14-labeled'' is corrected to read ''^{14}C-labeled''.

10. On page 3131, in the first column, in the first paragraph, in the thirteenth line, ''C^{14}-labeled'' is corrected to read ''^{14}C-labeled''.

11. On page 3132, in the second column, in fifteenth line, ''Vitamin K'' is corrected to read ''vitamin K'', and in the same column, in both the twentieth and twenty-first footnotes, and in the third column, in the twenty-second footnote, ''vol.'' is corrected to read ''vol. 2''.

12. On page 3135, in the first column, in the twenty-fourth footnote, in the fourth line, ''basline'' is corrected to read ''baseline'', and in the second column, in the first paragraph, in the tenth line, ''1,25–(OH)D'' is corrected to read ''1,25–$(OH)_2$D''.

13. On page 3136, in the second column, in the second full paragraph, in the seventh line, the word ''vitamin'' is removed, and on the same page, in the third column, in the sixth line, ''K1'' is corrected to read ''K_1''.

14. On page 3137, in the first column, in the second full paragraph, in the fifth line, ''3H-labeled'' is corrected to read ''^{3}H-labeled''.

15. On page 3138, in the second column, in the first paragraph, in the third line, and in the third column, in the third line, ''B12'' is corrected to read ''B_{12}''.

16. On page 3144, in the third column, in the second paragraph, in the eleventh line, the word ''that'' is removed.

17. On page 3147, in the third column, in the first paragraph, in the thirteenth line, insert a comma after the word ''cancer'', and in the same column, in the forty-first footnote, the sentences ''Dr. Alvan Feinstein is Chief of the Clinical Epidemiology Unit and a Sterling Professor of Medicine and Epidemiology at Yale University School of Medicine. Dr. Feinstein has consulted for the petitioner and presented at its request.'' are added after the footnote number.

18. On page 3148, in the first column, in the first full paragraph, in the third line; in the second paragraph, in the second and twenty-fifth lines; in the second column, in the sixteenth line; and in the first paragraph, in the fourth line, the word ''carotenoid'' is corrected to read ''carotenoids''.

19. On page 3151, in the third column, in the fifty-fifth footnote, in the second line, the name ''Schneemna'' is corrected to read ''Schneeman''.

20. On page 3152, in the second column, in the first full paragraph, in the sixth line, ''IV.B.1.a.'' is corrected to read ''IV.B.1.''.

21. On page 3153, in the second column, in the fourteenth line, the word ''was'' is removed, and in the same column, in the sixtieth footnote, the

name ''Joann'' is corrected to read ''Joanne''.

22. On page 3156, in the third column, in the sixth line, ''to safe'' is corrected to read ''to be safe'', and in the same column, in the first full paragraph, in the fourth line, the word ''stated'' is removed.

23. On page 3158, in the first column, following the footnote, ''[72] Transcript, vol. 1, p. 152.'' the misplaced sentence ''Accordingly, the petitioner concluded * * * by intestinal microflora.'' is removed and reinserted in the same column as a new last sentence of the second paragraph, following the words ''metabolize olestra.[72]'' On the same page, in the third column, in the second paragraph, in the eighth line, ''section VI.3.'' is corrected to read ''section VI.B.3.''

24. On page 3163, in the second column, in the third paragraph, in the third and twenty-second lines, ''(Ref. 105)'' is corrected to read ''(Ref. 104)''.

25. On page 3167, in Table 10, in the second column, in the last line, ''$K_1$1/g olestra'' is corrected to read ''K_1/g olestra''.

26. On page 3171, in the first column, in Ref. 102, in the the fifth line, ''pp. 783–799).'' is corrected to read ''pp. 783–799,''; and in the third column, in § 172.867, in paragraph (b)(6), in the first line, ''C12'' and ''C14'' are corrected to read ''C_{12}'' and ''C_{14}'', in the third line ''C20'' is corrected to read ''C_{20}'', and in the fourth line, ''C16'' and ''C18'' are corrected to read ''C_{16}'' and ''C_{18}''.

§ 172.867 Corrected

27. On page 3172, in the third column, in § 172.867 *Olestra*, in paragraph (d), in the fifth line, the word ''lacetate'' is corrected to read ''acetate'', and in the seventh line, ''K^1'' is corrected to read ''K_1''. In the same column, in paragraph (e)(1), in the fourth line of the warning statement ''and other other nutrients'' is corrected to read ''and other nutrients'', and in paragraph (e)(2)(iv), in the first line, the word ''kearned'' is corrected to read ''kerned''.

Dated: March 13, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–6741 Filed 3–20–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 573

[Docket No. 94F–0282]

Food Additives Permitted in Feed and Drinking Water of Animals; Poly(2-vinylpyridine-co-styrene)

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations (animal use) to provide for the safe use of the food additive poly(2-vinylpyridine-co-styrene) as a coating agent in the preparation of rumen-stable, abomasum-dispersible nutrient products for dairy cattle. This action is in response to a food additive petition filed by Rhone-Poulenc Animal Nutrition.

DATES: Effective March 21, 1996; written objections and request for hearing by April 22, 1996.

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

FOR FURTHER INFORMATION CONTACT: Sharon A. Benz, Center for Veterinary Medicine (HFV–226), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1729.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of August 11, 1994 (59 FR 41326), FDA announced that a food additive petition (animal use) (FAP 2231) had been filed by Rhone-Poulenc Animal Nutrition, 42, Avenue Aristide Briand, B.P. 100, 92164 Antony Cedex, France. The petition proposed to amend the food additive regulations in § 573.870 (21 CFR 573.870) to provide for the safe use of poly(2-vinylpyridine-co-styrene) as a coating agent in the preparation of rumen-stable, abomasum-dispersible nutrient products for dairy cattle and dairy replacement heifers. The additive is currently listed in § 573.870 as safe for use as a nutrient protectant in feed for beef cattle.

The notice of filing provided for a 75-day comment period. One comment has been received in response to the notice and is on file in the Dockets Management Branch (address above). The comment raised several questions concerning the fate and effects of poly(2-vinylpyridine-co-styrene) and its components released into the environment. Questions concerned the degradation rate when applied to the land as manure fertilizer, and degradation endpoint products. The comment also questioned whether the polymer or its monomers (styrene and 2-vinylpyridine) resulted in bioaccumulation, movement into groundwater, and/ or pollutant uptake by animals and plants.

FDA has reviewed the environmental assessment and supporting studies for use of poly(2-vinylpyridine-co-styrene) in dairy cattle feed. The amount expected to enter the soil environment from a typical consumption of 10 to 25 grams of rumen protected amino acid per head per day via manure from treated animals is 1.06 parts per million. The polymer is expected to be strongly adsorbed by soil and to have a low mobility. Therefore, it is not expected to move in significant quantities to surface or groundwater due to agricultural runoff. The environmental assessment states that no more than trace quantities are likely to enter the aquatic environment and no subsequent bioconcentration is expected. The environmental assessment demonstrates that 1.31 pounds of each of the monomers are expected to enter the environment each year resulting in soil concentrations of 0.21 parts per trillion (ppt) and air point source concentrations of 60 ppt. Therefore, the two monomers are not expected to have a significant effect on the environment. The information in the environmental assessment is sufficient to address the questions raised in the comment and adequate to conclude that significant environmental impacts are not expected to occur.

FDA has evaluated the data in the petition and other relevant material and concluded that use of poly(2-vinylpyridine-co-styrene) for dairy cattle (including replacement dairy heifers) in addition to the use for beef cattle as a nutrient protectant in feed is safe. Therefore, § 573.870 is amended as set forth below.

In accordance with § 571.1(h) (21 CFR 571.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Veterinary Medicine by appointment with the information contact person listed above. As provided in 21 CFR 571.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no

significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before April 22, 1996, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 573

Animal feeds, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 573 is amended as follows:

PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

1. The authority citation for 21 CFR part 573 continues to read as follows:

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

§ 573.870 [Amended]

2. Section 573.870 *Poly(2-vinylpyridine-co-styrene)* is amended in the introductory text and in paragraph (b) by adding the phrase ''and dairy cattle and replacement dairy heifers'' after the phrase ''beef cattle''.

Dated: March 6, 1996.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 96–6738 Filed 3–20–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8653]

RIN 1545–AS75

Hedging Transaction by Members of a Consolidated Group; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction of final regulations.

SUMMARY: This document contains a correction to the final regulations [TD 8653] which were published in the Federal Register for Monday, January 8, 1996 (61 FR 517). The final regulations relate to the character and timing of gain or loss from certain hedging transactions entered into by members of a consolidated group.

EFFECTIVE DATE: February 7, 1996.

FOR FURTHER INFORMATION CONTACT: Jo Lynn Ricks of the Office of the Assistant Chief Counsel (Financial Institutions and Products), (202) 622–3920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations which are the subject of this correction are under sections 446 and 1221 of the Internal Revenue Code.

Need for Correction

As published, TD 8653 contains an error that is in need of correction.

Correction of Publication

Accordingly, the publication of the final regulations which is the subject of FR Doc. 96–178, is corrected as follows:

§ 1.1221–2 [Corrected]

On page 520, column 2, § 1.1221–2, paragraph (d)(2)(iv), last line, the language ''after the date so indicated.'' is corrected to read ''after the date so indicated. The election may be revoked only with the consent of the Commissioner.''.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 96–6483 Filed 3–20–96; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Part 1

[TD 8648]

RIN 1545–AB21

Controlling Corporation's Basis Adjustment in its Controlled Corporation's Stock Following a Triangular Reorganization; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations [TD 8648] which were published in the Federal Register for Thursday, December 21, 1995 (60 FR 66077). The final regulations relate to the rules for adjusting the basis of a controlling corporation in the stock of a controlled corporation as the result of certain triangular reorganizations involving the stock of the controlling corporation.

EFFECTIVE DATE: December 21, 1995.

FOR FURTHER INFORMATION CONTACT: Curt Cutting, (202) 622–7550 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under sections 358, 1032, and 1502 of the Internal Revenue Code.

Need for Correction

As published, TD 8648 contains a typographical error that is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations which are the subject of FR Doc. 95–30875, is corrected as follows:

§ 1.358–6 [Corrected]

On page 66080, column 3, § 1.358–6 (c)(4), in paragraph (d) of *Example 2.*, line 9, the language ''Under 1.358–6 (c)(2)(i)(A), *P*'s basis in its *T*'' is corrected to read ''Under § 1.358–6 (c)(2)(i)(A), *P*'s basis in its *T*''.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 96–6484 Filed 3–20–96; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Parts 1 and 31

[TD 8661]

RIN 1545–AU10

Federal Tax Deposits by Electronic Funds Transfer

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the deposit of Federal taxes by electronic funds transfer (EFT) under section 6302 of the Internal Revenue Code. The document also includes temporary regulations providing authority for the voluntary payment of certain Federal taxes by EFT. The regulations would provide the public with additional guidance needed to make deposits by EFT and would affect certain taxpayers not previously required to make deposits by EFT. The text of these temporary regulations also serves as the text of a cross-reference notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the Federal Register.

EFFECTIVE DATE: March 21, 1996.

FOR FURTHER INFORMATION CONTACT: Vincent G. Surabian, 202–622- 6232 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On July 11, 1994, the IRS issued Treasury Decision 8553 (59 FR 35414), setting forth temporary regulations relating to the deposit of Federal taxes by EFT. Those temporary regulations explained which taxpayers must make deposits by electronic funds transfer, which taxes must be so deposited, and when the deposits must commence. The text of those temporary regulations also served as the text of a cross-reference notice of proposed rulemaking published in the same issue of the Federal Register at 59 FR 35418.

The IRS received many comment letters in response to the publication of those temporary regulations. In addition, a number of oral comments were made at the public hearing held on October 3, 1994. With limited exceptions, those comments will not be addressed in this document, but instead will be addressed in final regulations that the IRS expects to publish in the near future.

Under the temporary regulations currently in place, the requirement to begin EFT deposits is based on the taxpayer's total deposits of the taxes imposed by chapters 21 (FICA taxes), 22 (railroad retirement taxes) and 24 (income tax withheld at source) of the Internal Revenue Code during certain ''determination periods.'' If the taxpayer's deposits of those taxes during a determination period exceed a prescribed dollar threshold, the taxpayer must begin to deposit by EFT on and after the applicable effective date prescribed in the temporary regulations, unless otherwise exempted.

The amendments to the temporary regulations set forth in this document provide a special rule for any taxpayer that does not make deposits of the taxes imposed by chapters 21, 22, and 24, but that does make deposits of other taxes required to be deposited pursuant to regulations issued under section 6302 (for instance, corporate income taxes). If the taxpayer's total deposits for all other depository taxes during a prescribed determination period exceed a prescribed dollar threshold, the taxpayer must begin depositing by EFT on and after the applicable effective date prescribed in these amendments to the temporary regulations, unless otherwise exempted. (A taxpayer will become subject to the EFT requirement for the January 1, 1998, applicable effective date by exceeding the threshold amount during either calendar year 1995 or calendar year 1996.) The phase-in schedule is as follows:

Threshold amount	Determination period	Applicable effective date
$50 thousand	1–1–95 to 12–31–95.	January 1, 1998.
$50 thousand	1–1–96 to 12–31–96.	January 1, 1998.
$20 thousand	1–1–97 to 12–31–97.	January 1, 1999.

The current temporary regulations provide that a taxpayer subject to the EFT requirement must use EFT for all deposits required to be made on and after the applicable effective date. This requirement may subject a taxpayer to two different modes of deposit with respect to the same return period. For example, assume an employer is required to deposit by EFT beginning with the January 1, 1997, applicable effective date. The employer pays its employees weekly and has a paydate on December 31, 1996. The employment taxes incurred for that paydate would be reportable on the fourth quarter 1996 Form 941, but the due date for the deposit of those taxes would occur in early January 1997. Under the current rule, all the deposits relating to the fourth quarter 1996 Form 941 would be made by paper coupon (FTD coupon) with the exception of the deposit for the December 31 payroll, which would be made by EFT. For purposes of consistency, this rule is being changed with respect to the January 1, 1997, applicable effective date and thereafter to provide that the first deposit required to be made by EFT is the first deposit with respect to a deposit obligation incurred for a return period beginning on or after the applicable effective date. Thus, under the revised rule, the deposit with respect to the December 31 paydate in the example would be made by FTD coupon rather than by EFT.

The current temporary regulations provide that a deposit by EFT is deemed made (i) at the time a debit is made (the amount is withdrawn from the taxpayer's account) if the Government's authorized financial agent debits the taxpayer's account; or (ii) in all other cases, at the time the funds are credited to the Treasury's general account. Comments by the Federal Reserve Board, the Financial Management Service, and IRS personnel recommended a clarification of that provision. Based on those recommendations, the current temporary regulations are amended to provide that a deposit by EFT is deemed made (i) at the time a debit is made (the amount is withdrawn from the taxpayer's account and not returned or reversed) if the Government's authorized agent originates a debit entry which instructs the taxpayer's financial institution to debit the taxpayer's account for a Federal tax payment; or (ii) in all other cases (assuming the amount is not returned or reversed), either at the time the funds are paid into the Treasury's general account at the Federal Reserve Bank of New York or at the time the funds are invested under Treasury's Tax and Loan program (see 31 CFR Part 203). Investment occurs when the funds are credited by the Federal Reserve Bank to the depositary institution's note balance.

These temporary regulations also define the term *taxpayer*. For purposes of the EFT requirement, a taxpayer is any person required to deposit federal taxes, including not only individuals, but also any trust, estate, partnership, association, company or corporation. This definition responds to numerous inquiries following the issuance of the current temporary regulations.

Sections 31.6302–1T(h)(2) (describing the taxes required to be deposited by EFT) and 31.6302–1T(h)(8) (describing when a deposit of tax by EFT is deemed to be a payment of tax) have been revised solely for purposes of clarity. No substantive change is being made to either of the provisions.

These temporary regulations allow individual taxpayers to make voluntary

payments of income tax by EFT, even though individual income tax is not required to be deposited with a government depositary. The voluntary EFT payments are to be made in accordance with instructions provided in procedures to be prescribed by the Commissioner at a future date.

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 rules and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Vincent G. Surabian, Office of the Assistant Chief Counsel (Income Tax & Accounting), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

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

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 31 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

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

Section 1.6302–4T also issued under 26 U.S.C. 6302(a) and (c). * * *

Par. 2. Section 1.6302–4T is added to read as follows:

§ 1.6302–4T Use of financial institutions in connection with individual income taxes (temporary).

Voluntary payments by electronic funds transfer. An individual may voluntarily remit by electronic funds transfer all payments of tax imposed by subtitle A of the Code, including any payments of estimated tax. Such payments must be made in accordance with procedures to be prescribed by the Commissioner.

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

Par. 3. The authority citation for part 31 continues to read in part as follows:

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

Par. 4. Section 31.6302–1T is amended as follows:

1. Paragraph (h)(1)(ii)(A) is redesignated as paragraph (h)(1)(ii)(A)(*1*); the first sentence in newly designated paragraph (h)(1)(ii)(A)(*1*) is removed, and three new sentences are added in its place; and, in the last sentence of the newly designated paragraph, the text preceding the table is revised.

2. Paragraph (h)(1)(ii)(A)(*2*) is added.

3. Paragraphs (h)(2), (h)(3), (h)(7) and (h)(8) are revised.

The additions and revisions read as follows:

§ 31.6302–1T Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA)—deposits required to be made by electronic funds transfer after December 31, 1994 (temporary).

* * * * *

(h) * * * (1) * * *

(ii) *Periods after December 31, 1994.* (A)(*1*) Taxpayers whose aggregate deposits of the taxes imposed by Chapters 21 (Federal Insurance Contributions Act), 22 (Railroad Retirement Tax Act), and 24 (Collection of Income Tax at Source on Wages) of the Internal Revenue Code during a 12-month determination period exceed the applicable threshold amount are required to deposit all depository taxes described in paragraph (h)(2) of this section by electronic funds transfer (as defined in paragraph (h)(3) of this section) unless exempted under paragraph (h)(4) of this section. If the applicable effective date is January 1, 1995, or January 1, 1996, the requirement to deposit by electronic funds transfer applies to all deposits required to be made on and after the applicable effective date. If the applicable effective date is January 1, 1997, or thereafter, the requirement to deposit by electronic funds transfer applies to all deposits required to be made with respect to deposit obligations incurred for return periods beginning on and after the applicable effective date. * * * The threshold amounts, determination periods and applicable effective dates for purposes of this paragraph (h)(1)(ii)(A)(*1*) are as follows: * * *

(*2*) Unless exempted under paragraph (h)(4) of this section, a taxpayer that does not deposit any of the taxes imposed by chapters 21, 22, and 24 during the applicable determination periods set forth in paragraph (h)(1)(ii)(A)(*1*) of this section, but that does make deposits of other depository taxes (as described in paragraph (h)(2) of this section), is nevertheless subject to the requirement to deposit by electronic funds transfer if the taxpayer's aggregate deposits of all depository taxes exceed the threshold amount set forth in this paragraph (h)(1)(ii)(A)(*2*) during an applicable 12-month determination period. This requirement to deposit by electronic funds transfer applies to all depository taxes due with respect to deposit obligations incurred on and after the applicable effective date. The threshold amount, determination periods, and applicable effective dates for purposes of this paragraph (h)(1)(ii)(A)(*2*) are as follows:

Threshold amount	Determination period	Applicable effective date
$50 thousand	1–1–95 to 12–31–95.	January 1, 1998.
$50 thousand	1–1–96 to 12–31–96.	January 1, 1998.
$20 thousand	1–1–97 to 12–31–97.	January 1, 1999.

* * * * *

(2) *Taxes required to be deposited by electronic funds transfer.* The requirement to deposit by electronic funds transfer under paragraph (h)(1)(ii) of this section applies to all the taxes required to be deposited under §§ 1.6302–1, 1.6302–2, and 1.6302–3 of this chapter; §§ 31.6302–1, 31.6302–2, 31.6302–3, 31.6302–4, and 31.6302(c)–3; and § 40.6302(c)–1 of this chapter.

(3) *Definitions*—(i) *Electronic funds transfer.* An *electronic funds transfer* is any transfer of depository taxes made in accordance with Revenue Procedure 94–48 (1994–2 C.B. 694), (see § 601.601(d)(2) of this chapter), or in accordance with procedures subsequently prescribed by the Commissioner.

(ii) *Taxpayer.* For purposes of this section, a *taxpayer* is any person required to deposit federal taxes, including not only individuals, but also

any trust, estate, partnership, association, company or corporation.

* * * * *

(7) *Time deemed deposited.* A deposit of taxes by electronic funds transfer will be deemed made—

(i) At the time a debit is made (the amount is withdrawn from the taxpayer's account and not returned or reversed) if the Government's authorized agent originates a debit entry which instructs the taxpayer's financial institution to debit the taxpayer's account for a Federal tax payment; or

(ii) In all other cases (assuming the amount is not returned or reversed), either at the time that the funds are paid into the Treasury's general account at the Federal Reserve Bank of New York, or at the time that the funds are invested under Treasury's Tax and Loan program (see 31 CFR part 203). Investment occurs when the funds are credited by the Federal Reserve Bank to the depository institution's note balance.

(8) *Time deemed paid.* In general, an amount deposited under this paragraph (h) will be considered to be a payment of tax on the last day prescribed for filing the applicable return for the return period (determined without regard to any extension of time for filing the return) or, if later, at the time deemed deposited under paragraph (h)(7) of this section. In the case of the taxes imposed by chapters 21 and 24 of the Internal Revenue Code, solely for purposes of section 6511 and the regulations thereunder (relating to the period of limitation on credit or refund), if an amount is deposited prior to April 15th of the calendar year immediately succeeding the calendar year that includes the period for which the amount was deposited, the amount will be considered paid on April 15th.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 22, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 96–6718 Filed 3–20–96; 8:45 am]

BILLING CODE 4830–01–P

26 CFR Parts 1 and 602

[TD 8638]

RIN 1545–AT44

Certain Transfers of Domestic Stock or Securities by U.S. Persons to Foreign Corporations; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to temporary regulations.

SUMMARY: This document contains a correction to temporary regulations (TD 8638), which were published in the Federal Register Tuesday, December 26, 1995 (60 FR 66739), that amend the Income Tax Regulations with respect to certain transfers of stock or securities of domestic corporations by United States persons to foreign corporations pursuant to the corporate organization, reorganization, or liquidation provisions of the Internal Revenue Code. The temporary regulations also remove certain parts of the existing temporary regulations regarding transfers by U.S. persons of stock or securities of both domestic and foreign corporations.

EFFECTIVE DATE: December 26, 1995.

FOR FURTHER INFORMATION CONTACT: Philip L. Tretiak, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of this correction is under section 367 Internal Revenue Code.

Need for Correction

As published, the temporary regulations (TD 8638) contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8638), which were the subject of FR Doc. 95–30829, is corrected as follows:

On page 66739, column 2, in the preamble under the paragraph heading ''Applicability and Effective Dates'', line 9, the language ''for transfers occurring January 25, 1996.'' is corrected to read ''for transfers occurring after January 25, 1996.''.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 96–6482 Filed 3–20–96; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL140–1–7283a, IL141–1–7284a; FRL–5441–5]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) approves, through direct final procedure, Illinois' November 14, 1995 request to incorporate an exemption for acetone from the definitions of Organic Material and Organic Materials, Petroleum Liquid, and Volatile Organic Matter (VOM) or Volatile Organic Compounds (VOC) contained in the Illinois State Implementation Plan (SIP), and thereby from regulation as an ozone precursor. The USEPA also approves Illinois' November 15, 1995 request to revise the definition of VOM or VOC contained in the Illinois SIP to incorporate an exemption for parachlorobenzotrifluoride and cyclic, branched or linear completely-methylated siloxanes from the definition of VOM or VOC and thereby, from regulation as ozone precursors. These requested SIP revisions were made in response to, and consistent with, USEPA's action to add these chemical compounds to the list of chemicals that are exempted from the definition of VOC. In the proposed rules section of this Federal Register, USEPA is proposing approval of and soliciting public comment on these requested SIP revisions. If adverse comments are received on this action, USEPA will withdraw this final rule and address the comments received in response to this action in a final rule on the related proposed rule which is being published in the proposed rules section of this Federal Register. A second public comment period will not be held. Parties interested in commenting on this action should do so at this time.

DATES: This action is effective May 20, 1996 unless adverse or comments not previously addressed by the State or USEPA are received by April 22, 1996. If the effective date of this action is delayed due to adverse comments, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Copies of the Illinois submittal are available for public review during normal business hours, between 8:00 a.m. and 4:30 p.m., at the above address.

A copy of this SIP revision is also available for inspection at: Office of Air and Radiation (OAR), Docket and Information Center (Air Docket 6102), Room 1500, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Regulation

Development Section, Regulation Development Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Telephone: (312) 886–6036.

SUPPLEMENTARY INFORMATION: On June 16, 1995 (60 FR 31633), USEPA amended the definition of VOC to exclude acetone from the definition of VOC and thereby from control as an ozone precursor. Similarly on October 5, 1994 (59 FR 50693), USEPA amended the definition of VOC to add parachlorobenzotrifluoride and the class of compounds known as cyclic, branched or linear completely-methylated siloxanes to the list of chemicals excluded from the definition of VOC and thereby from control as ozone precursors. These exclusions were based on scientific evidence that these chemical compounds have negligible photochemical reactivity and a negligible contribution to tropospheric ozone formation.

The USEPA is approving the amendments to Title 35: Environmental Protection of the Illinois Administrative Code (35IAC), Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Part 211 as received on November 14th and November 15th 1995 as requested SIP revisions.

Final Rulemaking Action

For the reasons stated above, USEPA is approving the State's request to incorporate these revised definitions into the Illinois SIP. The specific rule and rule amendments being approved are as follows: Section 211.4250 Organic Material and Organic Materials, Section 211.4260 Organic Solvent, Section 211.4610 Petroleum Liquid, Section 211.7150 Volatile Organic Material (VOM) or Volatile Organic Compounds (VOC)

The USEPA is publishing this action without prior proposal because USEPA views this action as a noncontroversial revision and anticipates no adverse comments. However, the rulemaking will not be deemed final if timely unaddressed adverse or critical comments are filed. The ''direct final'' approval shall be effective on May 20, 1996, unless USEPA receives such adverse or critical comments by April 22, 1996. The USEPA is now soliciting public comments on this action. Any parties interested in commenting on this action should do so at this time. In the proposed rules section of this Federal Register, USEPA is publishing a separate document which constitutes a ''proposed approval'' of the requested SIP revision. If warranted by comments adverse to or critical of the approval discussed above, which have not been addressed by the State or USEPA, USEPA will publish a Federal Register document which withdraws this final action. The USEPA will then address public comments received in a subsequent rulemaking document based on the proposed approval.

Under sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, USEPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to a State, local and/or tribal government(s) in the aggregate. The USEPA must also develop a plan with regard to small governments that would be significantly or uniquely affected by the rule.

This rule imposes no additional Federal requirements. Rather it removes some existing Federal requirements which are no longer needed.

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

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

Under section 307(b)(1)of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 20, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, and Volatile organic compounds.

Dated: March 1, 1996.

Valdas V. Adamkus,

Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraphs (c)(125) and (126) to read as follows:

§ 52.720 Identification of plan.

(c) * * *

(125) On November 14, 1995 the State submitted requested revisions to the Illinois State Implementation Plan in the form of revisions to the definitions of Organic Material and Organic Materials, Organic Solvent, Petroleum Liquid and Volatile Organic Material (VOM) or Volatile Organic Compound (VOC) intended to exempt acetone from regulation as a VOC.

(i) Incorporation by reference. Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter c: Emission Standards and Limitations for Stationary Sources, Part 211: Definitions and General Provisions, Subpart B: Definitions, Section 211.4250 Organic Material and Organic Materials, Section 211.4260 Organic Solvent, Section 211.4610 Petroleum Liquid, Section 211.7150 Volatile Organic Material (VOM) or Volatile Organic Compounds (VOC). Amended at 19 Ill. Reg. 15176, effective October 19, 1995.

(126) On November 15, 1995 the State submitted a requested revision to the Illinois State Implementation Plan in the form of a revision to the definition Volatile Organic Material (VOM) or Volatile Organic Compound (VOC) intended to exempt parachlorobenzotrifluoride and cyclic, branched or linear completely methylated siloxanes from the definition of VOM or VOC and thereby, from regulation as a VOC.

(i) Incorporation by reference. Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter c: Emission Standards and Limitations for Stationary Sources, Part 211: Definitions and General Provisions, Subpart B: Definitions, Section 211.7150 Volatile Organic Material (VOM) or Volatile Organic Compounds (VOC). Amended at 19 Ill. Reg. 11066, effective July 12, 1995.

[FR Doc. 96–6603 Filed 3–20–96; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 52

[IN66–1–7289a; FRL–5439–6]

Approval and Promulgation of State Implementation Plan; Indiana; Clean-Fuel Fleet Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The U.S. Environmental Protection Agency (USEPA) is giving full approval through a direct final action to a state implementation plan (SIP) revision request submitted on December 20, 1995, and February 14, 1996, by the State of Indiana for the purpose of establishing a Clean-Fuel Fleet Program (CFFP) in Lake and Porter Counties. Lake and Porter Counties are classified as severe nonattainment for ground-level ozone, commonly known as urban smog, and are required under the Clean Air Act (CAA) to attain the National Ambient Air Quality Standards (NAAQS) by 2007. The Indiana CFFP, which is also required by the CAA, is one of the control measures being implemented in these counties to reduce ozone precursor emissions in order to help attain the ozone standard. The Indiana CFFP requires that, beginning in Model Year (MY) 1998, a specified percentage of the new vehicles acquired by certain vehicle fleets operating in Lake and Porter Counties meet clean fuel vehicle (CFV) emissions standards, which are more stringent than current federal vehicle standards. Indiana expects that after the full phase-in of the CFFP, approximately 3500 fleet vehicles in Lake and Porter Counties will meet the CFV tailpipe standards.

DATES: This final rule is effective May 20, 1996 unless adverse comments are received by April 22, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of this submittal, and other documents pertinent to this direct final rule are available at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, Air Programs Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Comments on this rule should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6082.

SUPPLEMENTARY INFORMATION:

I. Background

On November 15, 1990, Congress enacted amendments to the 1977 CAA, codified at 42 U.S.C. 7401–7671q. The CFFP is contained under Part C of Title II of the CAA, entitled ''Clean Fuel Vehicles.'' Part C was added to the CAA to establish two programs, a clean-fuel vehicle pilot program in the state of California (the California Pilot Test Program) and a federal CFFP in certain ozone and carbon monoxide (CO) nonattainment areas.

The CFFP will introduce lower polluting vehicles, CFVs, into centrally-fueled fleets by requiring covered fleet operators to include a specified percentage of CFVs in their new fleet purchases. The goal of the CFFP is to reduce emissions of non-methane organic gases (NMOG), oxides of nitrogen (NO_x), and CO through the introduction of CFVs into the covered areas. Both NMOG and NO_x are precursors of ozone and, in most areas, their reduction will reduce the concentration of ozone in covered ozone nonattainment areas. Reductions of vehicular CO emissions will reduce the concentration of CO in covered CO nonattainment areas.

Congress chose centrally-fueled fleets because operators of these fleets have more control over obtaining fuel than the general public. Additionally, the control that operators maintain over their fleets simplifies maintenance and refueling of these vehicles. Finally, because fleet vehicles typically travel more miles on an annual basis than do non-fleet vehicles, they provide greater opportunity to improve air quality on a per vehicle basis.

Section 182(c)(4) of the CAA allows states to opt-out of the CFFP by submitting, for USEPA approval, a SIP revision consisting of a substitute program resulting in as much or greater long term emission reductions in ozone producing and toxic air emissions as the CFFP. The USEPA may approve such a revision ''only if it consists exclusively of provisions other than those required under the [CAA] for the area.''

USEPA has promulgated rulemakings on March 1, 1993, December 9, 1993, and September 30, 1994, establishing emission standards for CFVs and criteria for state CFFPs (See 58 FR 11888, 58 FR 64679, and 59 FR 50042). These rules were codified in 40 CFR part 88.

II. Program Requirements

Unless a state chooses to opt-out of the CFFP under section 182(c)(4) of the CAA, section 246 of the CAA directs a state containing covered areas to revise its SIP, within 42 months after enactment of the CAA, to establish a CFFP. The CFFP shall require a specified percentage of all newly acquired vehicles of covered fleets, beginning with MY 1998 and thereafter, to be CFVs, and such vehicles shall use the fuel on which the vehicle was certified to be a CFV (or to use a fuel that will result in even fewer emissions than the fuel that was used for certification), when operating in the covered area.

III. State Submittal

The State of Indiana did not choose to opt-out of the CFFP pursuant to section 182(c)(4) of the CAA. On December 7, 1994, the Indiana Air Pollution Control Board (IAPCB) held a preliminary adoption hearing on a proposed rule to establish a CFFP program, and on October 4, 1995, the IAPCB adopted the rule. The rule became effective on January 18, 1996, and was published in the Indiana State Register on February 1, 1996. The Indiana Department of Environmental Management (IDEM) formally submitted the CFFP rule to USEPA on December 20, 1995, as a revision to the Indiana ozone SIP, and submitted an addendum which included the Secretary of State signature and the published rule on February 14, 1996.

The December 20, 1995, and February 14, 1996, submittals contains the following new rules:

326 Indiana Air Code (IAC) 19–3 Clean Fuel Fleet Vehicles

19–3–1	Applicability
19–3–2	Definitions
19–3–3	General purchase requirements
19–3–4	Banking and trading of credits

19–3–5 Registration and recordkeeping requirements
19–3–6 Exemptions from transportation control measures
19–3–7 Violations

IV. USEPA's Analysis of the State's Clean Fuel Fleet Program

USEPA has reviewed the State's submittal for consistency with the requirements of USEPA regulations at 40 CFR Part 88. A summary of USEPA's analysis is provided below.

A. Covered Areas

The SIP revision needs to list those areas where the CFFP will be implemented, as required by section 246(a)(2) of the CAA. In Indiana, the applicable areas defined by section 246(a)(2) are Lake and Porter Counties.

Section 19–3–1 defines the CFFP's covered area as Lake and Porter Counties. These are the same counties as required by the CAA.

B. Definitions

Sections 241(1) through (7) of the CAA, and 40 CFR 88.302–94, define specific terms that are to be used in state CFFP regulations.

Section 19–3–2 contains definitions of the terms used by Indiana in the CFFP rule. The revision's definitions are consistent with section 241(1) through (7) of the CAA as well as 40 CFR Part 88.302–94.

C. Fleet Applicability

Section 246(b) requires that the SIP revision's provisions for compliance with the CFFP apply to ''covered fleet operators.'' The definition of ''covered fleet operator,'' as provided for in 40 CFR 88.302–94, can be broken down into the following criteria which the SIP revision must include in order to determine which fleet operators are ''covered fleet operators:''

(a) The fleet operator is a person (individual, business, agency, etc;) who owns, operates, leases, or otherwise controls ten or more fleet vehicles. Vehicles leased for less than 120 days are exempt from this criteria.

(b) At least ten of those fleet vehicles are in a vehicle class which is required by the CAA to be covered in the program. These vehicle classes are light-duty vehicles and light-duty trucks (LDVs and LDTs) less than 8,500 pounds Gross Vehicle Weight Rating (GVWR) and heavy-duty trucks (HDTs) less than 26,000 pounds GVWR.

(c) At least ten of those vehicles are not exempt from the program. Section 241(5) of the CAA exempts motor vehicles held for lease or rental (without a driver) to the general public, motor vehicles held for sale by motor vehicle dealers (including demonstration vehicles), motor vehicles used for motor vehicle manufacturer product evaluations or tests, law enforcement and other emergency vehicles, and nonroad vehicles (including farm and construction vehicles).

(d) At least ten of those vehicles operate in the covered area. All fleet vehicles which are garaged in the covered area are considered to ''operate in the covered area.'' In addition, 40 CFR 88.302–94 provides that fleet vehicles that operate in, but are garaged outside, the covered area be included in the CFFP. This means that fleet vehicles garaged outside the Lake and Porter Counties but nonetheless operated in those counties are applicable to the CFFP rules.

(e) At least ten of those vehicles can be centrally fueled 100 percent of the time. ''Can be centrally fueled,'' as defined in 40 CFR 88.302–94, means the sum of those vehicles that are centrally fueled and those vehicles that are capable of being centrally fueled. Fleet vehicles are ''centrally fueled'' when they are fueled 100 percent of the time at a location that is owned, operated, or controlled by the covered fleet operator, or is under contract with the covered fleet operator. Location, as defined in 40 CFR 88.302–94(3), means any building structure, facility, or installation which; is owned or operated by a person, or is under the control of a person; is located on one or more contiguous properties and contains or could contain a fueling pump or pumps for the use of the vehicles owned or controlled by that person. Any vehicle under normal operation which is garaged at a personal residence that is, in fact, centrally fueled 100 percent of the time shall be considered to be ''centrally fueled'' for applicability purposes.

On the other hand, a fleet vehicle that is ''capable of being centrally fueled'' is one which could be refueled 100 percent of the time at a location that is owned, operated, or controlled by the covered fleet operator, or is under contract with the fleet operator. Fleet vehicles garaged at a personal residence would not be considered being ''capable of being centrally fueled'' for applicability purposes. A state must, in its SIP revision, provide a methodology to be used in determining how many fleet vehicles are capable of being centrally fueled, subject to USEPA approval.

Section 19–3–1 and 19–3–2 of the Indiana rule contain all the necessary components for determining covered fleet operator applicability as described above. Further, the rule states in subsection 19–3–2(4) that the determination of ''capable of being centrally fueled'' shall be made by using USEPA's recommended method provided on December 9, 1993 (58 FR 64684), as amended on September 30, 1994 (59 FR 50068). This method includes requiring covered fleet operators which control vehicles which are not centrally fueled 100 percent of the time to develop trip profiles which indicate the refueling patterns of those vehicles. These trip profiles will, in turn, be used to calculate the number of vehicles in the fleet which are capable of being centrally fueled.

D. Clean-Fuel Vehicles (CFVs)

Section 241(7) of the CAA defines a CFV to mean a vehicle in a class or category of vehicles that has been certified to meet for any model year the applicable CFV standards. 40 CFR 88.104–94 and 40 CFR 88.105–94 establish three categories of increasingly stringent CFV standards, which are referred to as low-emission vehicle (LEV) standards, ultra low-emission vehicle (ULEV) standards, and zero-emission vehicle (ZEV) standards.

Section 19–3–2(7) of the Indiana rule defines a CFV as a vehicle certified as a LEV, ULEV, or ZEV when it is operating on the clean fuel for which the vehicle was certified as a clean fuel vehicle, meeting the emissions standards applicable to such a vehicle promulgated September 30, 1994 at 59 FR 50042. The standards specified in the rule are the same as those established in 40 CFR 88.104–94 and 40 CFR.105–94.

E. Percentage Requirements

Section 246(b) of the CAA provides that the SIP revision require that at least a specified percentage of all new covered fleet vehicles in MY 1998 and thereafter purchased by each covered fleet operator shall be CFVs, and that these CFVs shall use the clean fuel or fuels for which they were certified to operate on when operating in the covered area.

''New covered fleet vehicle,'' for purposes of this requirement, means a vehicle that has not been previously controlled by the current purchaser, regardless of the MY, except as follows: vehicles that were manufactured before the start of MY 1998 for such vehicle's weight class, vehicles transferred due to the purchase of a company not previously controlled by the purchaser or due to a consolidation of business operations, vehicles transferred as part of an employee transfer, or vehicles transferred for seasonal requirements, that is, less than 120 days (See 40 CFR

88.302–94). This definition of new covered fleet vehicle is distinct from the definition of new vehicle as it applies to manufacturer certification, including the certification of vehicle to clean fuel standards.

Further, section 246(b) of the CAA provides the following table detailing the phase-in of the specified percentage requirements, which must be included in the SIP revision:

Vehicle type	MY 1998 (percent)	MY 1999 (percent)	MY 2000 (percent)
LDTs up to 6000 lbs. GVWR and LDVs	30	50	70
HDTs above 8,500 lbs. GVWR but below 26,000 lbs. GVWR	50	50	50

As an alternative to purchasing CFVs to meet the purchase requirement, section 246 allows fleet operators to redeem CFFP credits instead (the CFFP credit provisions are described in further detail below). Also, section 247 provides that new or existing vehicles owned or purchased by the fleet can be converted to meet CFV standards, if the conversions were made according to requirements promulgated at 40 CFR 88.306. (See September 30, 1994, at 59 FR 50042).

Finally, section 246(d) of the CAA requires that the choice of CFVs and clean fuels shall be at the discretion of the covered fleet operators.

The Indiana rule correctly incorporates all of the above required percentage purchase requirements which will be placed upon covered fleet operators. It also includes the three ways listed above to comply with the purchase requirement. Section 19–3–3(d) of the Indiana rule provides that the fleet operator shall decide which CFVs and fuels to use in order to comply with the purchase requirement. Section 19–3–3(f) requires that CFVs used to meet purchase requirements or generate credits shall operate at all times on the fuel for which they were certified as CFVs in Lake and Porter Counties. Finally, the rule requires at section 3(b) that CFV conversions must be done in accordance with the requirements for CFV conversions contained in 59 FR 50042, September 30, 1994.

G. Credit Program

Section 246(f) of the CAA and 40 CFR 88.304–94 require states to implement a credit program as part of their CFFPs. Briefly, the CFFP credit program establishes a market-based mechanism that allows fleet owners some flexibility in complying with the CFFP purchase requirement. The regulations under 40 CFR 88.304–94 require CFFPs to allow fleet operators to generate credits in any of the following ways: (1) by the purchase of more CFVs than the minimum required by a CFFP; (2) by the purchase of CFVs which meet more stringent emission standards than the minimum required by the CFFP; (3) by the purchase of CFVs otherwise exempt from the CFFP; and (4) by the purchase of CFVs before MY 1998.

40 CFR 88.304–94 further states that the credits generated may be used by a covered fleet operator to satisfy the purchase requirements of a CFFP or may be traded by one covered fleet operator to another, provided the credits were generated, traded, and used by operators located in the same nonattainment area. Lake and Porter Counties are in the same ozone nonattainment area as the Chicago area (as codified in 40 CFR 81.314 and 40 CFR 81.315), so that fleet operators covered under the Indiana CFFP can trade credits with fleet operators covered under the Illinois CFFP for the Chicago area portion of the ozone nonattainment area, and vice versa. Certain restrictions on the trading of the credits between classes must be observed. The credits do not depreciate with time and are to be freely traded without interference by the State.

Section 19–3–4 establishes rules for acquiring, trading and redeeming credits under the Indiana CFFP credit program according to regulations established in 40 CFR 88.304–94. The rule under 19–3–4(d)(4) requires credits for LDV and HDV to be kept separate. Trading of credits between the LDV and LDT subclasses is permitted. However, trading is not allowed between the HDV class and LDV/LDT class, or between HDV subclasses in an upward direction. These limitations and restrictions are consistent with those specified in section 246(f)(2) of the CAA. Moreover, section 19–3–4(a)(11) specifies that CFVs used to meet the purchase requirements or to generate purchase credits for a fleet operator cannot be used to satisfy additional purchase requirements or generate additional purchase credits for any other fleet operator, even if the latter operator purchases or acquires those CFVs from the former. Section 19–3–4(e) of the Indiana rule includes tables which set forth the amount of credit granted for the various ways of meeting the purchasing requirements explained above. These tables are identical to Tables C94–1.1, C94–1.2, C94–1.3, C94–4.1, C94–4.2, and C94–4.3 of 40 CFR Part 88, Subpart C.

Finally, the rule specifies that each fleet operator submit an annual report to IDEM which indicates the number of credits sold, traded, or purchased during the previous year and the number of credits proposed to be used by the operator to satisfy purchase requirements for that year.

H. Fuel Use

40 CFR 88.304–94(b)(3) requires that the fuel on which a dual fuel/flexible fuel CFV was certified must be used at all times when the vehicle is in the covered area.

Section 19–3–3(f) requires that any CFV acquired to meet the purchase requirements of the CFFP or to generate credits must be operated, while in the covered area, on the fuel or power source for which it was certified by USEPA to meet applicable emission standards.

It should be noted that the definition of ''clean alternative fuel'' under section 241(2) of the CAA does not designate particular fuels as fuels that vehicles must use in order to be considered CFVs. Rather, for purposes of the CFFP, ''clean alternative fuel,'' is defined under section 241(2) of the CAA as meaning any fuel or power source used in a CFV that complies with the standards and requirements applicable to such vehicle under the CFFP when using such fuel or power sources. In other words, when a vehicle model is certified to meet CFV emission standards, the fuel type the vehicle model used to achieve those standards is considered the ''clean alternative fuel.''

A CFV can operate on any fuel, including gasoline, as long as the vehicle's manufacturer received a certificate from the USEPA for that vehicle model confirming that it meets the particular CFV emission standard when using that fuel. The type of fuel or power source on which a CFV will operate on will be determined only by what fuel the CFV has been certified to use.

I. Fuel Availability:

Section 246(e) of the CAA requires the SIP revision to require fuel providers to

make clean alternative fuel available to the covered fleets at central locations.

Because fuel providers in Lake and Porter Counties are already required by USEPA to make reformulated gasoline available, and USEPA expects that many CFVs in MY 1998 will be certified to operate on reformulated gasoline, USEPA believes that section 246(e) is satisfied for purposes of the Indiana CFFP.

J. Consultation

Section 246(a)(4) of the CAA requires that the SIP revision must be developed in consultation with fleet operators, vehicle manufacturers, fuel producers, distributors of motor vehicle fuel, and other interested parties, taking into consideration operational range, specialty uses, vehicle and fuel availability, costs, safety, resale values, and other relevant factors.

On October 14, 1994, before the IAPCB preliminarily adopted the CFFP, IDEM sent a letter, addressed to 250 representatives of fleet operators and fuel providers expected to be affected by the Indiana CFFP, which described the program, solicited comment on the proposed rule, invited the representatives to participate with IDEM in the program's development, and invited them to attend the IAPCB preliminary adoption hearing.

On August 31, 1995, before the IAPCB adopted the CFFP, IDEM sent a letter to these same representatives inviting them to attend an informational session where IDEM and the regulated community could meet together to discuss the CFFP and be given further opportunity to comment on the rule. This meeting was held in Portage, Indiana on September 20, 1995.

K. Recordkeeping and Monitoring

USEPA recommends that the State include recordkeeping provisions in its CFFP that require fleet operators to register with the State in advance of MY 1998 in order to provide information to be used to determine their covered status, require annual reports from covered fleet operators indicating annual fleet acquisitions, fuel use, and credit generation/redemption to determine compliance, and require covered and noncovered fleet operators to submit periodic reports indicating covered status (See 58 FR at 64679, December 9, 1993).

Section 19–3–5 provides for recordkeeping and reporting requirements as described above. In addition, 19–3–5 requires that information required in the annual report, as well as routine maintenance records for all vehicles, shall be maintained by the covered fleet operator for compliance audit purposes. Monthly odometer readings, fuel economy information, and fuel usage for dual fuel or flexible-fuel vehicles also need to be kept, as well as copies of converted vehicle certification for all converted clean-fuel vehicles. CFVs shall at all times be accompanied by certification that they are CFVs.

L. Enforcement

40 CFR 88.304–94(b)(ii) requires that each CFFP SIP revision stipulate the specific mechanism by which the CFFP will be administered and enforced.

IDEM will oversee compliance and enforcement with this rule, and will hire contractors to review the annual recordkeeping reports to assure the regulatory requirements of the Indiana CFFP are being met.

The Indiana Code (IC) 13–7–13–1, states that any person who violates any provision of IC 13–1–1, IC 13–1–3, or IC 13–1–11, or any regulation or standard adopted by one (1) of the boards (i.e., IAPCB), or who violates any determination, permit, or order made or issued by the commissioner (of IDEM) pursuant to IC 13–1–1, or IC 13–1–3, is liable for a civil penalty not to exceed twenty-five thousand dollars per day of any violation. Because this submittal is a regulation adopted by the IAPCB, a violation of which subjects the violator to penalties under IC 13–7–13–1, and because a violation of the ozone SIP would also subject a violator to enforcement under section 113 of the CAA by USEPA, USEPA finds that the submittal contains sufficient enforcement penalties for approval. In addition, IDEM has submitted a civil penalty policy document which accounts for various factors in the assessment of an appropriate civil penalty for noncompliance with IAPCB rules, among them, the severity of the violation, intent of the violator, and frequency of violations. USEPA finds these criteria sufficient to deter non-compliance.

M. Transportation Control Measure Exemptions

40 CFR 88.307–94(a) requires states to exempt any CFV required by law to participate in a CFFP from temporal-based (e.g., time-of-day or day-of-week) transportation control measures (TCM) existing for air quality reasons as long as the exemption does not create a clear and direct safety hazard. In the case of high occupancy vehicle (HOV) lanes, this exemption only applies to CFVs that are certified by USEPA to be inherently low-emitting vehicles (ILEV) pursuant to 40 CFR 88.313–93.

Section 19–3–6 stipulates that CFVs shall receive TCM exemptions from time-of-day, day-of-the-week, day-of-the-month, or other similar time-based restrictions. Further, ILEVs shall be exempt from mechanisms designed to reduce air pollution from motor vehicles by limiting their use in certain areas, air quality related parking restrictions, and HOV lane restrictions.

N. Conclusion

The USEPA has reviewed the Indiana CFFP SIP revision submitted to the USEPA as described above. The materials contained in the SIP revision represent an acceptable approach to the CFFP requirements and meet the criteria required for approvability. The USEPA therefore approves Indiana's CFFP SIP submittal. With this action, USEPA incorporates Indiana's CFFP SIP revision into the SIP, making it federally enforceable.

Procedural Background

A. Direct Final Action

The USEPA is publishing this action without prior proposal because USEPA views this action as a noncontroversial revision and anticipates no adverse comments. However, USEPA is publishing a separate document in this Federal Register publication, which constitutes a ''proposed approval'' of the requested SIP revision and clarifies that the rulemaking will not be deemed final if timely adverse or critical comments are filed. The ''direct final'' approval shall be effective on May 20, 1996, unless USEPA receives adverse or critical comments by April 22, 1996. If USEPA receives comments adverse to or critical of the approval discussed above, USEPA will withdraw this approval before its effective date by publishing a subsequent Federal Register document which withdraws this final action. All public comments received will then be addressed in a subsequent rulemaking document. Any parties interested in commenting on this action should do so at this time. If no such comments are received, USEPA hereby advises the public that this action will be effective on May 20, 1996.

B. Executive Order 12866

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

exempted this regulatory action from Executive Order 12866 review.

C. Applicability to Future SIP Decisions

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

D. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') (signed into law on March 22, 1995) requires that the USEPA prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the USEPA to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the USEPA must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The USEPA must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the USEPA explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

This final rule only approves the incorporation of existing state rules into the SIP and imposes no additional requirements. This rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year. USEPA, therefore, has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Furthermore, because small governments will not be significantly or uniquely affected by this rule, the USEPA is not required to develop a plan with regard to small governments.

E. Regulatory Flexibility

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

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

F. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 20, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: February 29, 1996.

Valdas V. Adamkus,

Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(104) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(104) On December 20, 1995, and February 14, 1996, Indiana submitted a Clean-Fuel Fleet Program for Lake and Porter Counties as a revision to the State Implementation Plan.

(i) Incorporation by reference. 326 Indiana Administrative Code 19–3 Clean Fuel Fleet Vehicles, Sections 1 through 7. Adopted by the Indiana Air Pollution Control Board October 4, 1995. Signed by the Secretary of State December 19, 1995. Effective January 18, 1996. Published at Indiana Register, Volume 19, Number 5, February 1, 1996.

[FR Doc. 96–6597 Filed 3–20–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MA–19–1–6648a; A–1–FRL–5436–3]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Emission Statements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving Massachusetts' revised 310 CMR 7.12, ''Inspection Certificate, Record Keeping and Reporting'' and incorporating it into Massachusetts' SIP. EPA received revisions to the Massachusetts SIP revising 310 CMR 7.12 on three separate occasions however, EPA is addressing all three submissions in this action. These revisions to 310 CMR 7.12 streamline and clarify the permitting process and address the Clean Air Act's emission statement program requirement. This action is being taken in accordance with the Clean Air Act.

DATES: This action is effective May 20, 1996, unless, notice is received by April 22, 1996, that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to Susan Studlien, Acting Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment

at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, Boston, MA.

FOR FURTHER INFORMATION CONTACT: David Conroy, (617) 565–3254.

SUPPLEMENTARY INFORMATION:

I. Background

The air quality planning and State Implementation Plan (SIP) requirements for ozone nonattainment and transport area are set out in subparts I and II of part D of Title I of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990 (CAA or ''the Act''). EPA has published a ''General Preamble'' describing EPA's preliminary views on how EPA intends to review SIP's and SIP revisions submitted under Title I of the CAA, including those State submittals for ozone transport areas within the States {see 57 FR 13498 (April 16, 1992) [''SIP: General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990''], 57 FR 18070 (April 28, 1992) [''Appendices to the General Preamble''], and 57 FR 55620 (November 25, 1992) [''SIP: NO_X Supplement to the General Preamble'']}.

EPA has also issued a draft guidance document describing the requirements for the emission statement programs discussed in this Notice, entitled ''Guidance on the Implementation of an Emission Statement Program'' (July, 1992). The Agency is also conducting a rulemaking process to modify part 40 of the CFR to reflect the requirements of the emission statement program.

Section 182 of the Act sets out a graduated control program for ozone nonattainment areas. Section 182(a) sets out requirements applicable in marginal nonattainment areas, which are also made applicable in subsections (b), (c), (d), and (e) to all other ozone nonattainment areas. Among the requirements in section 182(a) is a program in paragraph (3)(B) of that subsection for stationary sources to prepare and submit to the State each year emission statements showing actual emissions of volatile organic compounds (VOC) and nitrogen oxides (NO_X). This paragraph provides that the States are to submit a revision to their State Implementation Plans (SIPs) by November 15, 1992 establishing their emission statement program.

Section 184(b)(2) of the Act extends the requirements for major stationary sources in moderate ozone nonattainment areas to sources in the ozone transport region which emit, or have the potential to emit, 50 tpy or more of VOC. Section 182(f) extends the requirements for major stationary sources of VOC in ozone transport regions to major sources of NO_X. For areas designated as attainment or nonattainment areas which are not classified, Section 182(f) refers to Section 302 where the major source definition for NO_X is the potential to emit 100 tons per year. Therefore, the emission statement requirement encompasses all stationary sources in all classified nonattainment areas, as well as sources in attainment areas and unclassified nonattainment areas within ozone transport regions, which emit or have the potential to emit 100 tpy or more of NO_X or 50 tpy or more of VOC.

Massachusetts is located in the ozone transport region and is a classified ozone nonattainment area. Therefore, Massachusetts is subject to the more stringent source threshold requirement of 182(a)(3)(B). Massachusetts' source thresholds of the emission statement regulation must cover *all* sources which emit VOC or NO_X.

For classified ozone nonattainment areas, the States may waive, with EPA approval, the requirement for an emission statement for classes or categories of sources with less than 25 tons per year of actual plant-wide NO_X or VOC emissions in nonattainment areas if the class or category is included in the base year and periodic inventories and emissions are calculated using emission factors established by EPA (such as those found in EPA publication AP–42) or other methods acceptable to EPA. Massachusetts has provided a 1990 baseyear inventory which includes emissions from sources that emit below 25 tpy of VOC or NO_X emissions and will be updating this inventory every three years until the area is redesignated to attainment. In addition, the methods and emission factors used by Massachusetts to calculate emissions for the 1990 baseyear inventories have been reviewed by EPA. As a result, EPA finds the 25 tpy threshold acceptable.

Additionally, if either VOC or NO_X is emitted at or above the statutory reporting level, the other pollutant must be included in the emission statement, even if it is emitted at levels below the specified cutoffs.

The CAA requires that States' rules specify that facilities must submit the first emission statement to the State within three years after November 15, 1990, and annually thereafter. EPA requests that the States submit the emission data to EPA through the Aerometric Information Retrieval System (AIRS). The minimum emission statement data should include: certification of data accuracy; source identification information; operating schedule; emissions information (including annual and typical ozone season day emissions); control equipment information; and process data. EPA developed emission statements data elements to be consistent with other source and State reporting requirements. This consistency is essential to assist States with quality assurance for emission estimates and to facilitate consolidation of all EPA reporting requirements.

II. Analysis of State Submission

A. Procedural Background

The Act requires States to observe certain procedural requirements in developing its SIP, of which the emission statement program will become a part. Section 110(l)(2) of the Act provides that each revision to an implementation plan submitted by a State under the CAA must be adopted by such State after reasonable notice and public hearing. EPA must at the outset determine whether a submittal is complete and therefore warrants further EPA review and action (see Section 110(k)(1) and 57 FR 13565). EPA's completeness criteria for SIP submittals are set out at 40 CFR Part 51, Appendix V (1991), as amended by 57 FR 42216 (August 26, 1991).

On July 15, 1994, EPA received the SIP submittal of amendments to 310 CMR 7.12 addressing emission statement requirements. The amendments were adopted by Massachusetts on June 29, 1994 and became effective on July 1, 1994. Hearings were held on May 6, 10, 11, and 13, 1994. EPA deemed the submittal complete on July 15, 1994 and the sanctions clocks were stopped. However, the February 21, 1993 finding also triggered the Federal Implementation Plan (FIP) clock. EPA has remained obligated to promulgate a FIP clock until this final rulemaking action is taken. Therefore, the FIP clock is stopped on the effective date of this final rulemaking action approving Massachusetts' emission statement program.

B. Components of the Emission Statement Program

There are several key general and specific components of an acceptable emission statement program. Specifically, the State must submit a revision to its SIP and the emission statement program must meet the

minimum requirements for reporting by the sources and the State. In general, the program must include, at a minimum, provisions for applicability, definitions, compliance, and specific source requirements detailed below.

1. SIP Revision Submission

EPA requires States to submit their SIP revision within 2 years of enactment of the Clean Air Act Amendments of 1990 (CAAA) (November 15, 1990).

Massachusetts was notified in a letter dated January 15, 1993, that if the emission statement submittal was not received by February 21, 1993, a finding of failure to submit will automatically be made. Since Massachusetts did not submit the SIP revision until July 15, 1994, findings were made. EPA reviewed the submittal and deemed it complete on July 15, 1994. Therefore, the sanctions clock was stopped. However, the February 21, 1993 finding also triggered the Federal Implementation Plan (FIP) clock. EPA has remained obligated to promulgate a FIP until this final rulemaking action is taken. Therefore, the FIP clock is stopped on the effective date of this final rulemaking action approving the emission statement program.

2. Reporting Requirements for State

In addition to the program elements applying to sources, the SIP should include a provision that States provide to EPA the identifying information for the sources covered by the emission statement program, the value for rule effectiveness utilized by the State in its SIP calculations, the source data elements entered into AIRS, and quarterly emission statement status reports. The minimum source identification information should include the AIRS code, the AFS point number (ID), the AFS segment number (ID), and the Source Category Code (SCC) and descriptions for each segment.

In addition, States should supply to EPA the current rule effectiveness (RE) factors at the SCC pollutant level, if applicable, and the RE method codes. The emission statement data submittal to AIRS should include all data obtained from the source and the State. These source-supplied data elements include source identification information (name, physical location, mailing address of the facility, latitude and longitude, and 4-digit Standard Industrial Classification (SIC) code(s)), operating schedule information (percentage annual throughput, days per week on the normal operating schedule, hours per day during the normal operating schedule, and hours per year on the normal operating schedule), process rate data (annual process rate (annual throughput) and peak ozone season daily process rate), control equipment information (current primary and secondary control equipment identification codes and current combined control equipment efficiency (%)), and emissions information (estimated actual VOC and NO_X emissions at the segment level (in tons per year for an annual emission rate and pounds per day for a typical ozone season day), estimated emissions method code, calendar year for the emissions, and emission factor (if used)). EPA recommends that the States electronically submit emission statement data into the AIRS database no later than July 1 of each year, commencing in 1993. The quarterly reports should show the total number of facilities that met the State's emission statements program requirements and the number of facilities that failed to meet the requirements. Quarterly reports should be submitted commencing no later than July 1, 1993.

The July 15, 1994 submittal did not fully meet the data element requirement for an approvable emission statement program. EPA notified Massachusetts with a list of data elements that Massachusetts needed to add to the source registration forms for EPA to approve its emission statement program. Massachusetts assured EPA in a letter, dated December 30, 1994, that the data elements were being incorporated into the source registration forms. Massachusetts' source registration forms do require all the EPA required data elements. The uploading of emission statement information to AIRS, by July 1 of each year, is a grant condition that EPA has negotiated with Massachusetts.

3. Sources Covered

Section 182(a)(3)(B) requires that States with areas designated as nonattainment for ozone require emission statement data from sources of VOC or NO_X in the nonattainment areas. This requirement applies to all classified ozone nonattainment areas, regardless of the classification (Marginal, Moderate, etc.). Section 184(b)(2) of the Act extends the requirements for major stationary sources in moderate ozone nonattainment areas to sources in the ozone transport region. Section 182(f) extends the requirements for major stationary sources of VOC in ozone transport regions to major sources of NO_X. Therefore, the emission statement requirement encompasses all stationary sources in all classified nonattainment areas, as well as sources in attainment areas and unclassified nonattainment areas within ozone transport regions, which emit or have the potential to emit 100 tpy or more of NO_X or 50 tpy or more of VOC.

The States may waive, with EPA approval, the requirement for emission statements for classes or categories of sources with less than 25 tons per year of actual plant-wide NO_X or VOC emissions in nonattainment areas if the class or category is included in the base year and periodic inventories. Massachusetts emission statement regulations have exempted sources with VOC and NO_X emissions below 25 tpy from emission statement requirements. Massachusetts has provided 1990 baseyear inventories which include emissions from sources that emit 25 tpy of VOC or NO_X and will be updating these inventories every three years until the area is redesignated to attainment. In addition, the methods and emission factors used by Massachusetts to calculate emissions for the 1990 baseyear inventory have been reviewed by EPA. As a result, EPA finds the 25 tpy threshold acceptable.

The entire state of Massachusetts is designated as nonattainment for ozone and is located within the boundaries of the ozone transport region. 310 CMR 7.12(1)(b) states that information required by 310 CMR 7.12(1)(a) shall be submitted annually for any facility having actual emissions greater than or equal to:

(1) Volatile organic compounds, 25 tpy

(2) Nitrogen oxides, 25 tpy

(3) Any other pollutant regulated under the Act, 100 tpy and once every three years for all other facilities.

4. Reporting Requirements for Sources

Sources covered by the State emission statement program will submit, at a minimum, the data elements described under section II.B.2 of this notice.

The emission statement submitted by the source will contain a certification that the information is accurate to the best knowledge of the individual certifying the statement. EPA recommends that the State program require the submission of the data from the sources no later than April 15 of each year.

Massachusetts sends a cover letter accompanying the emission statement forms to the facilities. The cover letter, included in the SIP submittal, requires that the forms be completed using data pertaining to the facility's operations during calendar year 1993 and returned to DEP no later than June 1, 1994. EPA is approving this submittal date since the Emission Statement Workgroup is

proposing to require States to submit emission statement data to AIRS by November 15 rather than July 1. Massachusetts will have sufficient time to submit data to AIRS by November 15 if sources submit emission statements by June 1.

5. Reporting Forms

Although EPA has developed a proposed format for the emission statement reporting process in its guidance document, the Act allows States to develop their own format for emission statement reporting.

Massachusetts provides the sources with Source Registration/Emission Statement forms. On December 30, 1994, Massachusetts sent a letter notifying EPA that the current Source Registration/Emission Statement forms are being modified in format to provide to industry a summary of the data in the DEP SSEIS (and EPA AIRS) system as a basis for update and certification of emissions. In addition, the letter included data elements that had been added or are in the process of being added to the forms.

III. Final Action

EPA is approving Massachusetts' revised 310 CMR 7.12, ''Inspection Certificate, Record Keeping and Reporting'' and incorporating it into Massachusetts' SIP. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective May 20, 1996, unless adverse or critical comments are received by April 22, 1996.

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

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

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

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 182(a)(3)(B) of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

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

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

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

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 20, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* Section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Oxides of nitrogen, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: September 18, 1995.

John P. DeVillars,

Regional Administrator, Region I.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(106) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(106) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on June 28, 1990, September 30, 1992, and July 15, 1994.

(i) Incorporation by reference.

(A) Letter from the Massachusetts Department of Environmental Protection, dated June 28, 1990, submitting a revision to the Massachusetts State Implementation Plan.

(B) Letter from the Massachusetts Department of Environmental Protection, dated September 30, 1992, submitting a revision to the Massachusetts State Implementation Plan.

(C) Letter from the Massachusetts Department of Environmental Protection, dated July 15, 1994, submitting a revision to the Massachusetts State Implementation Plan.

(D) Regulation 310 CMR 7.12 entitled ''Inspection Certification Record Keeping and Reporting'' which became effective on July 1, 1994.

(ii) Additional materials.

(A) Nonregulatory portions of submittal.

(B) Letter from the Massachusetts Department of Environmental Protection, dated December 30, 1994, assuring EPA that the data elements noted in EPA's December 13, 1994 letter were being incorporated into the source registration forms used by Massachusetts emission statement program.

(ii) Additional materials.

(A) Nonregulatory portions of submittal.

* * * * *

3. In § 52.1167 Table 52.1167 is amended by adding new state citations for entry 310 CMR 7.12 to read as follows:

§ 52.1167 EPA—approved Massachusetts State regulations

* * * * *

TABLE 52.1167—EPA—APPROVED MASSACHUSETTS REGULATIONS

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
*	*	*	*	*	*	*
310 CMR 7.12 ..	Inspection Certificate Record Keeping and Reporting.	6/28/90; 9/30/92; 7/15/94	March 21, 1996	61 FR 1559	106	The 6/28/90 and 9/30/92 submittals deal with the permitting process. The 7/15/94 submittal develops 7.12 to comply with emission statement requirements.
*	*	*	*	*	*	*

[FR Doc. 96–6781 Filed 3–20–96; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[OH78–2–7116; FRL–5440–4]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: The USEPA is approving the Ohio Environmental Protection Agency's (OEPA) request for redesignation of Clinton County, Ohio from transitional ozone nonattainment to attainment. The USEPA is also approving the maintenance plan and emissions inventory for Clinton County as a revision to Ohio's State Implementation Plan (SIP) for ozone. Clinton County's monitoring data shows that it is already meeting the ozone air quality standard. In addition, in order to meet USEPA redesignation requirements the State must continue to maintain the ozone National Ambient Air Quality Standards for at least ten years after the redesignation, or the year 2006. Thus, the State has developed a maintenance plan which includes specific contingency measures to assure continued compliance with the ozone air quality standard. Any monitored violation in Clinton County will trigger these contingency measures to reduce ozone levels. In addition, an ambient air monitor will remain in operation to verify future attainment status of the area.

EFFECTIVE DATE: This final rule is effective on March 21, 1996.

ADDRESSES: Copies of the redesignation request, public comments on the rulemaking, and other materials relating to this rulemaking are available for inspection at the following address: (It is recommended that you telephone Fayette Bright at (312) 886–6069, before visiting the Region 5 Office.) United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Fayette Bright, Air Programs Branch, Regulation Development Section (AR–18J), United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6069.

SUPPLEMENTARY INFORMATION:

I. Background

On November 15, 1994, the OEPA submitted to the USEPA a request for redesignation of Clinton County, Ohio from transitional nonattainment [1] to attainment for ozone, and a maintenance plan designed to assure continued attainment of the national ambient air quality standards for ozone in the Clinton County area. On February 24, 1995, the OEPA submitted additional information to the USEPA regarding the State public hearing and responses to public comments received regarding the redesignation and the maintenance plan. The redesignation request was supported by technical information demonstrating that the requirements of Section 107(d)(3)(E) of the Clean Air Act (Act) were met. On May 5, 1995, a document was published in the Federal Register (60 FR 22337) which proposed approval of the redesignation request the maintenance plan, and the emissions inventory.

[1] As stated in the proposed rule, Clinton County did not experience a violation during the three year period from January 1, 1987 through December 31, 1989. Therefore, pursuant to Section 185(A) of the Clean Air Act, it was designated a transitional nonattainment area for ozone. Under this classification, the requirements of Subpart 2 of Part D of Title 1 of the CAA for ozone nonattainment areas were suspended for Clinton County until December 31, 1991. See 60 FR 22337 (May 5, 1995). After December 31, 1991, the requirements were no longer suspended, however, Subpart 2 did not contain any new requirements that would apply to a transitional area that was not classified under Section 181(a) as marginal or above.

II. Summary of Proposed Rulemaking

The proposed rulemaking detailed how the State submittal fulfilled the redesignation requirements of the Act. Specifically, Section 107(d)(3)(E) of the Act provides for redesignation if: (i) The Administrator determines that the area has attained the National Ambient Air Quality Standards (NAAQS); (ii) the Administrator has fully approved the applicable implementation plan for the area under Section 110(k); (iii) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (iv) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of Section 175(A); (v) the State containing such area has met all requirements applicable to the area under Section 110 and Part D. The USEPA also provided guidance on redesignation in the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, 57 FR 13498 (April 16, 1992), supplemented at 57 FR 18070 (April 28, 1992) and in three key memoranda which were cited in the May 5, 1995 Federal Register notice. See 60 FR 22337. The following discussion expands and clarifies the analysis made in the proposed rule as to how the State has fulfilled the Act's redesignation requirements for Clinton County.

A. The Area Must Have Attained the Ozone NAAQS.

There is a 2-step process to determining whether an area has violated the ozone NAAQS which both tallies the number of monitored exceedances and accounts for any time the monitor was not operating or operating improperly. The first step is to determine the number of expected exceedances for each year of the last three years from each monitoring site. The second step is to determine the area's average expected exceedance rate over the most recent three year period. Pursuant to 40 C.F.R. 50.9, this rate cannot exceed 1.0.

The OEPA submitted monitoring data for Clinton County for the years 1977 through 1994. The monitor recorded 5 exceedances of the ozone NAAQS in 1983. This resulted in an average expectant exceedance rate of greater than 1.0. Consequently, Clinton County was found to be in violation of the NAAQS. On November 15, 1990, Clinton County retained its nonattainment designation and was classified as a transitional area based on monitoring data for 1987, 1988 and 1989. Clinton County exceeded the NAAQS for ozone for the years 1988, 1989, and 1993, during which there were only single exceedances during each of these years. In addition, monitoring data shows that no exceedances were monitored during 1995. Because Clinton County had only one exceedance during the last three years of complete monitoring data (1993–1995), the average expected exceedance rate is 0.33 per year, which falls below the average expected exceedance rate of 1.0. Thus, Clinton County currently meets the ozone NAAQS and has been in attainment since 1986.

B. The Area Must Have a Fully Approved State Implementation Plan (SIP) Under Section 110(k)

Because Clinton County is classified as a transitional area for ozone, it is only required to submit an emissions inventory as a SIP revision.[2] This final rulemaking also approves the emissions inventory for the Clinton County area which has been included as part of the maintenance plan.[3] Consequently, the area has satisfied the second requirement.

C. The Improvement in Air Quality Must Be Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollutant Control Regulations and Other Permanent and Enforceable Reductions

The State of Ohio did not rely on new SIP measures to meet this requirement because there were no new emission reduction programs required by the CAA to be approved into the SIP. Instead, the State demonstrated that the improvement in air quality was due to the Federal Motor Vehicle Emissions Control Program (FMVCP) required at 40 Code of Federal Regulations (CFR) Part 86 and the lower fuel volatility requirements at 40 CFR Part 80. Both of these requirements are permanent measures enforceable by the Federal government.

The State has also shown that in Clinton County, actual total VOC emissions were reduced by approximately two (2) tons per day from 1990 to 1993. The State attributes these results exclusively to reductions in mobile source emissions. The mobile source emission reductions were the result of the lower fuel volatility program and the FMVCP. Consequently, the third requirement has also been met.

D. The Area Must Have a Fully Approved Maintenance Plan Meeting the Requirements of Section 175(A)

The OEPA has met the applicable requirements by submitting a maintenance plan consisting of emission inventories for area, point, and mobile sources of Volatile Organic Compounds (VOC), Nitrogen Oxides (NO_X), and Carbon Monoxide (CO) emissions. This maintenance plan also includes a contingency plan with defined measures to be implemented in accordance with a specified schedule, as presented in Section II. D of the May 5, 1995 proposed rule. Additionally, any monitored violation in Clinton County would also trigger contingency measures in the counties comprising the Cincinnati moderate nonattainment area. (The State has also developed rules and an implementation plan to place a program in operation in the event a violation in any of these areas occur).

The current RVP requirement in the State of Ohio is 9.0 pounds per square inch (psi).[4] There is a 1 psi waiver available for retailers and blenders who use ethanol as an octane enhancer/additive. This waiver would still be available with the State's low-RVP program in the event it is implemented. The low-RVP program and other measures on Ohio's list of contingency measures are new measures that are not currently in place in the area.

E. The Area Must Have Met All Applicable Requirements Under Section 110 and Part D

Ohio has also met this requirement, as detailed in a discussion in the May 5, 1995 Federal Register proposed approval of the redesignation request at 60 FR 22343.

The proposed rulemaking also presented summary tables of VOC emissions, CO emissions, and NO_X emissions projections for Clinton County. The tables for VOC and NO_X are presented below.

[2] September 4, 1992 memorandum issued by John Calcagni, Director, Air Quality Management Division, entitled ''Procedures for Processing Requests to Attainment''.

[3] The September 4, 1992 memorandum issued by John Calcagni, Director, Air Quality Management Division, entitled, ''Procedures for Processing Requests to Attainment,'' allows approval action on the SIP elements and the redesignation request to occur simultaneously.

[4] Federal RVP requirements are found at 40 CFR Section 80.27. As of the summer of 1992, gasoline RVP could not exceed 9.0 psi during the months of May through September. There is a special provision for fuels blended to a 10 volume percent ethanol. The provision allows the RVP to exceed 9.0 psi up to 10.0 psi.

SUMMARY OF VOC EMISSIONS (TONS/DAY)

	1990 base	1993 attain	1996 proj.	1999 proj.	2002 proj.	2006 proj.
Point	0.0	0.0	0.0	0.0	0.0	0.0
Area	11.3	11.33	11.36	11.39	11.42	11.47
Mobile	5.04	3.27	2.82	2.80	2.31	2.42
Totals	16.34	14.60	14.18	14.19	13.73	13.89

SUMMARY OF NO_X Emissions (tons/day)

	1990 base	1993 attain	1996 proj.	1999 proj.	2002 proj.	2006 proj.
Point	0.0	0.0	0.0	0.0	0.0	0.0
Area	1.62	1.63	1.64	1.64	1.65	1.66
Mobile	4.80	4.19	3.69	3.65	3.13	3.25
Totals	6.42	5.82	5.33	5.29	4.78	4.91

The VOC and NO_X emissions projected for the year 2006 in the above tables are considered emission budgets for purposes of transportation conformity. Section 176 of the CAA sets forth the requirement that the federal government and metropolitan planning organizations may not support transportation activities that do not conform to the purpose of the SIP. This is generally known as ''transportation conformity.'' In the Maintenance Plan portion of the SIP an emissions budget is established for certain areas. This budget is the amount of emissions that the area must remain below in order to maintain the ozone standard. Clinton County is designated as a transitional nonattainment area that is generally downwind of the Cincinnati Metropolitan area. The Clinton County area does not have any major stationary sources of emissions and is considered a relatively small source of emissions. In addition, the last violation of the ozone NAAQS in Clinton County occurred in 1983.

Public Comment/USEPA Response

In response to USEPA's request for written comments on the proposed rulemaking, USEPA received comments from the Miami Group of the Ohio Chapter of the Sierra Club (the Miami Group). The Miami Group submitted comments regarding the redesignation of both the Cincinnati and the Clinton County areas.[5] Because this final rulemaking only addresses the redesignation of the Clinton County area, the following discussion summarizes and responds *only* to the Miami Group's comments insofar as they concerned the redesignation of the Clinton County area. USEPA will respond to the Miami Group's comments regarding the redesignation of the Cincinnati area in any final rulemaking regarding the redesignation of the Cincinnati area.

Comment: The area has not yet proven that it has attained the NAAQS. The NAAQS for ozone are not fully protective of the public health and the environment. The area has reached attainment previously only to be followed by violations. Additionally, the ozone monitoring network may be insufficient and no consideration is given to downwind areas.

Response: The current ozone standard was set to protect public health. The OEPA has shown that the Clinton County area meets the NAAQS, as described in both this final rulemaking and in the proposed rulemaking published on May 5, 1995. In addition, the ozone monitoring network has been determined by USEPA, to be representative of ambient air concentrations of ozone in the Clinton County area. In addition, the monitoring network will remain in operation after the redesignation to attainment to verify the future attainment status of the area.

Finally, as stated in the proposed rule, the USEPA intends to address the transport or downwind area issue through Section 110 of the Act, based on a domain-wide modeling analysis. The domain-wide modeling analysis involves modeling the eastern portion of the United States in an effort to better understand what is needed in this region to reduce the amount of transported ozone and ozone precursors such as volatile organic compounds and oxides of nitrogen, so that the ozone NAAQS can be achieved in all areas across the region. Section 110 of the CAA requires that SIPs contain adequate provisions to prohibit sources or emissions activities within the State from contributing to nonattainment, or interfering with maintenance in any other state with respect to the NAAQS. USEPA expects to use its authority under the CAA to require states to revise their SIPs to meet this requirement.

Comment: The improvement in air quality is not due to permanent and enforceable reductions in emissions. The lack of violations of the ozone NAAQS may be due to voluntary controls. Increasing vehicle miles travelled will result in increasing emissions, offsetting reductions from the removal of older vehicles. There are inconsistencies in the Vehicle Miles Traveled (VMT) and growth projections between the SIP, the Transportation Improvement Program (TIP), and the redesignation request.

Response: The State reasonably attributed improvement in air quality to be primarily due to two Federal programs: the FMVCP and the lower Reid Vapor Pressure (RVP) program, both of which are permanent and Federally enforceable. The transportation projections were calculated using methods consistent with USEPA guidance. The differences in VMT growth projections are slight and do not affect the approval of the redesignation package. The year 2006 total VOC emission totals as detailed in this rulemaking set the budget for transportation conformity purposes. While VMT is increasing in Clinton County, the vehicles in the area are producing less pollution per vehicle due to the FMVCP. This offsets the growth in VMT and results in less pollution from the mobile sources sector. Emissions projections using USEPA's mobile emissions model to estimate vehicle emissions combined with the VMT projections for Clinton County confirm this conclusion.

Comment: The transportation modeling and emission analysis is flawed and makes it impossible for the maintenance plan to succeed. Changes in VMT brought about by changes in highway systems or land development have not been adequately addressed.

Response: The approach used to estimate mobile source emissions is reasonable and in accordance with USEPA guidance. The Mobile 5a model

[5] USEPA's proposed rule in the May 5, 1995 Federal Register notice at 60 FR 22343 addressed OEPA's request for both the redesignation of the Ohio portion of the Cincinnati area and the Clinton County area.

is the appropriate model to use to predict emission factors which can be applied to VMT to obtain emission projections. Additionally, mobile source inventories will be updated at least once every three years to incorporate new VMT estimates and revised USEPA mobile emission models.

Comment: If the area is redesignated to attainment, stationary sources will be allowed to grow uncontrolled.

Response: Currently, no major sources are located in the Clinton County area. Any major new sources located in this area would be subject to Prevention of Significant Deterioration (PSD) requirements at 40 C.F.R. § 52.21. These regulations require major new sources and major modifications of existing sources to use Best Available Control Technology (BACT). In addition, any allowable emission increases from such new construction could not cause or contribute to air pollution in the area. The maintenance plan prepared for Clinton County also relies on contingency measures to correct any future violations. These contingency measures would be implemented in the event the standard is violated.

Comment: The contingency plan is based on insufficient control measures and the implementation schedule is too long.

Response: The contingency plan is adequate. It contains 12 possible measures. Moreover, it is not limited to the list of 12 measures in the submittal. For example, the State may select other control measures based on cost-effectiveness, VOC reduction potential, economic and social consideration, or other factors. The implementation schedule calls for a VOC control program to be implemented as expeditiously as possible and to be in place no later than 12 months from the verification that a violation of the ozone National Ambient Air Quality Standards (NAAQS) has occurred. USEPA believes that this schedule satisfies the requirement of section 175A that contingency measures promptly correct any violations and is consistent with schedules contained in numerous other maintenance plans approved by USEPA.

Comment: The Long Range Plan contains emission projections which are insupportable.

Response: Ohio demonstrated that by considering the growth in the area (including VMT growth) and present controls on existing emission sources, emissions will remain below the attainment year inventory through the year 2006. In projecting mobile source emissions, Ohio obtained VMT based on the TRANPLAN Model which uses traffic counting data for the year 1990. To forecast VMT to the year 2006, Ohio used growth parameters based on modeling of the Long Range Transportation Plan (future highway network). This modeling process incorporated population growth estimates from Ohio Data Users Center, employment forecasts, and other forecasts regarding socio-economic data. USEPA considers the methodology which was used to project emissions to be reasonable.

III. Rulemaking Action

Clinton County, which is located to the northeast of the City of Cincinnati, is being redesignated from transitional nonattainment to attainment for ozone. In the proposed rulemaking published on May 5, 1995, USEPA detailed how the Clinton County portion of the submittal met the redesignation requirements of Section 107(d)(3)(E). See 60 FR 22337.

USEPA received comments pertaining to the proposed rulemaking. The comments were considered and responses were detailed in the above section of this notice. The USEPA believes that the redesignation requirements of Section 107(d) are satisfied and is taking final action to approve the request for redesignation to attainment and to approve the maintenance plan and emissions inventory for Clinton County, Ohio.

USEPA finds that there is good cause for this redesignation, maintenance plan and emissions inventory to become effective immediately upon publication because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which exempts the area from certain Act requirements that would otherwise apply to it. The immediate effective date for this redesignation, maintenance plan and emissions inventory is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction'' and section 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.''

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

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

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. Redesignation of an area to attainment under section 107(d)(3)(E) of the Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities. SIP approvals under section 110 and subchapter I, Part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

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

Through submission of the state implementation plan or plan revisions approved in this action, the State and any affected local or tribal governments have elected to adopt the program

provided for under section 175A of the Clean Air Act. The rules and commitments being proposed for approval in this action may bind State, local and tribal governments to perform certain actions and also may ultimately lead to the private sector being required to perform certain duties. To the extent that the rules and commitments being proposed for approval by this action will impose or lead to the imposition of any mandate upon the State, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose or lead to the imposition of any mandate upon the private sector, USEPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action. The USEPA has also determined that this action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 20, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental Protection, Air pollution control, Ozone, Nitrogen oxides, Volatile organic compounds.

40 CFR Part 81

Air pollution control.

Dated: March 1, 1996.

Valdas V. Adamkus,

Regional Administrator.

Chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.1885 is amended by adding paragraphs (b)(9) and (y) to read as follows:

§ 52.1885 Control Strategy: Ozone.

* * * * *

(b) * * *

(9) Clinton County

* * * * *

(y) Approval—The 1990 base-year ozone emissions inventory requirement of Section 182(a)(1) of the Clean Air Act has been satisfied for Clinton County.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES-OHIO

1. The authority citation for part 81 continues to read as follows:

Authority: 42. U.S.C. 7401–7671q.

2. In § 81.336 the ozone table is amended by revising the entry for the Clinton County Area to read as follows:

§ 81.336 Ohio

* * * * *

OHIO—OZONE

Designated area	Designation		Classification	
	Date[1]	Type	Date	Type
* * *	*	*	*	*
Clinton County Area, Clinton County	March 21, 1996	Attainment		
* * *	*	*	*	*

[1] This date is November 15, 1990 unless otherwise noted.

[FR Doc. 96–6778 Filed 3–20–96; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 572

[Docket No. 94–31]

Information Form and Post-Effective Reporting Requirements for Agreements Among Ocean Common Carriers Subject to the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is amending its regulations governing the information submission requirements for agreements among ocean common carriers subject to the Shipping Act of 1984. Certain kinds of newly filed agreements are required to be accompanied by a new information form, which requires the submission of specific data on the agreement member lines' cargo carryings, revenue results and port service patterns before they entered into the agreement. In addition, the member lines of certain kinds of effective agreements will be required to submit reports on their operations on a regular and ongoing basis, which will reflect the lines' cargo carryings, revenue results and port service patterns after they entered into the agreement. The application of this rule to a particular agreement depends primarily on whether the agreement authorizes its carrier members to engage in certain activities, and secondarily on the carrier members' combined market share. An agreement that does not authorize any of the activities specified by the rule must still be filed with the Commission, unless it qualifies for one of the Commission's filing exemptions, but does not have any information form or reporting obligations. The intent of this rule is to provide the Commission with improved information on the impact of concerted carrier practices on the foreign commerce of the United States, and to facilitate the processing and monitoring of ocean carrier agreements under the standards of the Shipping Act of 1984.

EFFECTIVE DATE: April 19, 1996, except for 46 CFR 572.701(a) and 46 CFR 572.702, which are stayed until further notice.

FOR FURTHER INFORMATION CONTACT:

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, (202) 523–5740

Austin L. Schmitt, Director, Bureau of Economics and Agreement Analysis, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, (202) 523–5787

SUPPLEMENTARY INFORMATION:

A. Background

The jurisdiction of the Federal Maritime Commission (''FMC'' or ''Commission'') over ocean carrier agreements in the foreign commerce of the United States extends under section 4(a) of the Shipping Act of 1984 (''1984 Act'') to all agreements to:

(1) Discuss, fix, or regulate transportation rates, including through rates, cargo space accommodations, and other conditions of service;

(2) Pool or apportion traffic, revenues, earnings, or losses;

(3) Allot ports or restrict or otherwise regulate the number and character of sailings between ports;

(4) Limit or regulate the volume or character of cargo or passenger traffic to be carried;

(5) Engage in exclusive, preferential, or cooperative working arrangements * * *;

(6) Control, regulate, or prevent competition in international ocean transportation; and

(7) Regulate or prohibit * * * use of service contracts.

46 U.S.C. app. 1703(a).

The reforms in 1984 to the Shipping Act were intended in large part to facilitate the swift effectiveness, with immunity from the antitrust laws, of such agreements. Section 15 of the former Shipping Act, 1916 (''1916 Act''), had required carriers to secure Commission approval for any agreement governing rates, conditions of service, or similar matters, before such an agreement could become effective. Under standards set forth in section 15, the Commission was permitted to disapprove, cancel, or modify any agreement which it found to be unjustly discriminatory or unfair, or to operate to the detriment of the commerce of the United States, or to be contrary to the public interest, or to be in violation of the 1916 Act. 46 U.S.C. 814 (1982).

The Commission, with Supreme Court approval, had taken the position that agreements to set rates, pool revenues, restrict capacity, or to engage in other activities that normally would be contrary to the antitrust laws were presumed to be contrary to the public interest, and would be approved only if they were shown to be ''required be a serious transportation need, necessary to secure important public benefits or in furtherance of a valid regulatory purpose of the Shipping Act.'' *FMC v. Svenska Amerika Linien*, 390 U.S. 238, 243 (1968). The burden of making this showing was placed upon the carrier proponents of an agreement, on the ground that information regarding the operation and probable future impact of an agreement ''[a]lmost uniformly * * * is in the hands of those seeking approval * * * and it is incumbent upon those in possession of such information to come forward with it.'' *Mediterranean Pools Investigation*, 9 F.M.C. 264, 290 (1966). Under these procedures, the implementation of agreements had often been delayed for considerable amounts of time, especially if formal protests were made. *See Marine Space Enclosures, Inc. v. FMC*, 420 F.2d 577 (D.C. Cir. 1969) (requiring that the Commission hold a hearing where a protest raising substantial issues had been filed). In many cases, protests were filed by other carriers, who effectively delayed or blocked the approval of their competitors' business plans.

The 1984 Act did away with the requirement that an agreement had to be approved by the Commission before it could lawfully operate. Instead, agreements now generally become effective forty-five days after they are filed. As a partial counterbalance to this liberalized approach, conference agreements [1] are required by section 5(b) of the Act, 46 U.S.C. app. 1704(b), to include a number of procompetitive provisions, and the Commission may reject a conference agreement that does not meet this standard. Especially noteworthy is the requirement that all conference agreements must clearly state that any member line may take ''independent action'' (''IA'') on any rate or service item required to be filed in a tariff with the Commission; this empowers any member line to set an individual rate below (or above) the conference rate, without having to obtain approval of the rate from the other member lines. The conference is then required to publish the IA rate in its conference tariff upon no more than ten days' notice.

The Commission may also prescribe the ''form and manner'' in which agreements of any kind must be filed, and may reject an improperly drafted agreement. In addition, the Commission may request information and documents in connection with a newly filed agreement and, if its demand is not ''substantially'' met, may seek a delay in the agreement's effective date or other relief from the United States District Court for the District of Columbia.[2]

The 1984 Act sets forth an extensive list of prohibited acts, barring many anticompetitive practices that previously had been outlawed under the broad ''public interest'' standard of section 15 of the 1916 Act. For example, section 10(b)(6) of the 1984 Act, 46 U.S.C. app. 1709(b)(6), carries forward section 15's prohibition of agreements that are unfair or unjustly discriminatory between shippers or ports. Sections 10(c) (1)–(3) and (5) of the 1984 Act, *id.* app. 1709(c) (1)–(3) and (5), prohibit boycotts, restrictions on technological innovations, predatory practices and the denial of reasonable freight forwarded compensation, all of which the Commission previously had found violated section 15.[3]

If the Commission has indications that an agreement may be operating in violation of the 1984 Act, it may institute an investigation of the agreement and its member lines. In addition, the Commission may ask any U.S. district court to temporarily enjoin the agreement while the investigation proceeds.[4] If the court should find that continued operation of the agreement would be inequitable, it can issue an order barring further effectiveness of the agreement until ten days after issuance of the Commission's final decision. If the Commission should find in its final decision that violations of the 1984 Act in fact occurred, it may ''disapprove, cancel or modify'' the agreement,[5] which would in effect supersede the existing court injunction. In addition, the Commission may assess fines against the agreement member lines.[6]

The other procedure provided by the 1984 Act by which the Commission can prevent an agreement from going into effect, or prevent further operation of an existing agreement, is set forth in section 6(g). This provision authorizes the Commission to seek an injunction in the U.S. District Court for the District of Columbia against an agreement that is ''likely, by a reduction in competition, to produce an unreasonable reduction in transportation service or an unreasonable increase in transportation cost.'' 46 U.S.C. app. 1705(g). A proceeding under section 6(g) does not involve questions of discrimination or

[1] Under the 1984 Act, a conference is an association of ocean common carriers that engage in concerted activities and utilize a common tariff. Section 3(7), 46 U.S.C. app. 1702(7).

[2] Sections 6 (d) and (i) of the 1984 Act, 46 U.S.C. app. 1705 (d) and (i).

[3] *See* S. Rep. No. 3, 98th Cong., 1st Sess. 35–37 (1984).

[4] Section 11(h)(1) of the 1984 Act, 46 U.S.C. app. 1710(h)(1).

[5] Section 11(c) of the 1984 Act, 46 U.S.C. app. 1710(c).

[6] Section 13(a) of the 1984 Act, 46 U.S.C. app. 1712(a).

unfairness, which are covered by the section 10 prohibited acts, nor does it involve questions of statutory violations or fines against the carriers. Section 6(g) was meant to provide a way of dealing with ''unusual or severe cases not addressed by other prohibitions in the Act,'' [7] and the only remedy available under the provision is an injunction against the agreement itself.

B. The Commission's Agreement Program

The Commission's procedures for evaluating and monitoring carrier agreements reflect the responsibilities and limitations imposed by the 1984 Act. When an agreement is first filed, its provisions are immediately reviewed to ensure that they contain the 1984 Act's mandatory provisions and do not authorize activities barred by the prohibited acts sections. In the ordinary case, that is a one-time process and does not entail ongoing periodic review.

An agreement's effect on shippers, ports and maritime commerce is a different matter. An agreement of significant anticompetitive dimensions—for example, a large market share combined with authority to fix rates and control service contracts—poses potential dangers of unjust discrimination and unreasonable rate increases or service reductions both when it is first filed and for as long as it remains in effect. Thus, under the new regulatory framework established by the 1984 Act, the role of the Commission as a monitoring and surveillance agency was greatly enhanced. In discharging that responsibility, the Commission cannot merely examine an agreement's provisions; rather, it must continually gather, review and interpret data on the impact of the agreement on U.S. foreign commerce. As for the source of such information, the 1984 Act removed the burden of proof in agreement investigations from the carriers, but did not alter the accuracy of the Commission's 1966 observation in *Mediterranean Pools Investigation* that the primary source for information on the operation of an agreement is the carriers that are the parties to the agreement.

C. The Proposed Rule

On December 5, 1994, the Commission published a Notice of Proposed Rulemaking (''NPR'' or ''proposed rule'') (59 FR 62372), which proposed significant amendments to the Commission's regulations governing the submission of information by ocean carriers about their agreements. The Commission explained that, while the existing regulations had served their purpose adequately, the increasingly comprehensive and complex agreements filed in recent years indicated a need for updating and augmentation. The Commission pointed out that agreements with multi-country geographic ranges are now common, new devices and arrangements for dealing with excess capacity have appeared, rate discussion agreements between conference and nonconference lines have become more prevalent, and networks of vessel and space charter agreements covering a multitude of trade lanes have been established.

In response to these industry developments, the Commission proposed new regulations designed to elicit more detailed and specific information on ocean carrier agreements in a more structured and comprehensive manner. The proposed rule formulated a sliding scale of information demands for three classes of agreements that authorized certain specific activities, ''Class A,'' ''Class B'' and ''Class C.'' An agreement that did not authorize any of the specified activities would still be required by law to be filed with the Commission, unless it qualified for one of the existing exemptions established by the Commission,[8] but would not have any information obligations.

1. Classification of Agreements: The Six Class A/B Activities

Under the proposed rule, Class A and Class B agreements permitted the same kinds of activities; the difference between them was market share. An agreement would be a Class A or a Class B agreement if it authorized *any one* of the following six activities:

- Ratemaking. This specifically included not only traditional conference agreements, under which a group of lines agree upon fixed rates and practices and are bound to them under a common tariff, but also less formal agreements which authorize discussion and agreement upon rates on a ''non-binding'' basis. The Commission noted that the latter types of agreements have become increasingly common, and that their presence in a trade raises serious concerns about the true level of competition since they can involve discussions and agreements about rates between non-conference lines or between a conference and its non-conference competitors.

Under the proposed rule, the ''ratemaking'' criterion would be met if the agreement authorizes its carrier members to (1) agree on a binding basis under a common tariff, (2) agree on a non-binding basis, or (3) discuss any kind of basic linehaul rate. On the other hand, the proposed rule specifically excluded those agreements that are limited to practices that affect the manner in which rates are collected from shippers—for example, credit conditions and the handling of delinquent accounts—but do not concern the level of the rates themselves, and those agreements that concern charges or payments to persons other than shippers, *e.g.*, inland divisions of through rates, brokerage, freight forwarder compensation, employment of neutral bodies for self-policing purposes, or development of cargo information systems.

- Discussion or exchange of vessel-operating cost data. The Commission has received a number of agreements that do not authorize rate discussions or agreements of any kind, but do authorize discussion of or exchange of cost data among the member carriers. The most significant costs for ocean common carriers are vessel-operating costs, which the proposed rule defined to include wages of officers and crew, fringe benefits, consumable stores, supplies and equipment, maintenance and repair, insurance, vessel fuel, and charter hire. The Commission stated that it believed that agreements to discuss and exchange information about these costs should be subjected to the same degree of scrutiny as their close cousins, rate discussion agreements. On the other hand, the proposed rule did not apply the ''costs'' criterion to discussion of other types of expense that are less important for setting rates. In order to make this distinction effective, the proposed rule required agreements seeking to authorize discussion or exchange of cost data to specify whether that authority includes any of the vessel-operating costs.
- Joint service. The Commission observed that, while the introduction of a joint service into a trade by outside lines may increase the level of competition and the range of services available for shippers, there can be negative effects on competition and service if the joint service is formed by lines that up to that point had been competing in the trade, and especially if the new entity would have substantial market power.
- ''Capacity management'' or ''capacity regulation.'' This relatively new device for dealing with overtonnaging had appeared in two major agreements, the Trans-Atlantic Conference Agreement (''TACA'') and

[7] H.R. Rep. No. 600, 98th Cong., 2d Sess. 37 (1984).

[8] *See* 46 CFR 572.302–11.

the Transpacific Stabilization Agreement (''TSA''). It limited the availability of vessel space to shippers, but did not reduce the real capacity of the carriers.

- Regulation or discussion of service contracts. Most agreements engaging in this activity are conference agreements, which would already be covered by the ''ratemaking'' criterion. However, agreements among non-conference lines may include authority to confer and to reach ''non-binding'' agreements on service contract terms.
- Cargo or revenue pooling. The Commission explained that such agreements are severely anticompetitive by nature and must be closely regulated.

2. Classification of Agreements: The Importance of Market Share

The proposed rule required any agreement that authorized one or more of the six Class A/B activities to be accompanied, upon its initial filing, with an information form showing its parties' market shares both for the entire agreement and in each of the sub-trades within the overall scope of the agreement, during the most recent calendar quarter for which complete data are available. ''Sub-trade'' was defined as all liner movements between each U.S. port range (Atlantic, Gulf and Pacific) and each foreign country within the overall scope of the agreement. For example, an agreement with an overall scope of U.S. Pacific Coast to the Far East would have sub-trades of U.S. Pacific Coast to Japan, U.S. Pacific Coast to Taiwan, and so forth.

An agreement that authorized at least one of the six Class A/B activities and whose parties held combined market shares of 50 percent or more in half or more of its sub-trades would be classified as a Class A agreement under the proposed rule.[9] The parties to such an agreement would be required to submit extensive historical data on the initial information form *and,* if the agreement went into effect, to submit detailed quarterly reports on their operations under the agreement. An agreement that authorized at least one of the six activities, but whose parties did not hold market shares of 50 percent or more in at least half of its sub-trades, would be classified as a Class B agreement. It would file the same information form as a Class A agreement but, if it went into effect, would have significantly lighter reporting obligations. Under the proposed rule, classification of an agreement as Class A would not be permanent; the agreement's ongoing reporting obligations would include market share data, and at the beginning of each calendar year, the parties' sub-trade market shares during the third calendar quarter (July–September) of the previous calendar year would determine whether it would remain under Class A reporting obligations for the upcoming year.

Market share is an important measure of an agreement's potential for abuse of economic power and unreasonable or discriminatory price and service practices. In the NPR, the Commission explained that the break point of 50 percent in at least half of the sub-trades was chosen ''in the belief that an agreement that is a relatively minor presence in a majority of its sub-trades—that is, a 'Class B' agreement—is unlikely to be able to impose unreasonable or unfair rates or practices regardless of what it authorizes its parties to do, and does not require extensive gathering of information about its operation.'' 59 FR at 62377. The Commission also pointed out, however, that an important feature of the proposed rule was that the market share calculation for a rate discussion agreement or a ''non-binding'' rate agreement between conference and non-conference lines would add the market shares held by the non-conference lines to those held by the conference lines for purposes of determining whether the agreement should be classified as Class A or Class B.

The new focus on sub-trades resulted from the increasing number of agreements with multi-coast or even multi-continent geographic ranges. The Commission pointed out in the NPR that in some of the more geographically fragmented parts of the world, such as the Far East and the South Pacific, individual countries can constitute separate and cloistered markets, and that agreements that serve a comparatively unified landmass, such as Europe, might still implement practices that differ from area to area within the general market. The Commission concluded that these factors argued for information-gathering systems that acquire data relevant to an agreement's sub-trades, rather than only the market defined by the agreement's total scope. Accordingly, the information (besides market share) sought by the proposed rule for Class A agreements was, for the most part, concerned with the agreement's sub-trades.

3. Class A Agreements Under the Proposed Rule

The proposed rule's *informtion form* for a Class A agreement began by requiring a listing of all effective agreements covering all or part of the geographic scope of the proposed agreement, whose parties include one or more of the parties to the proposed agreement. This provision was designed to ensure that the Commission has accurate information regarding the recent trend toward networks of agreements connected by common parties. Next, the form required an identification of all Class A/B activities that the agreement seeks to authorize.

After obtaining the market share data discussed above, the information form then inquired into the recent agreement-wide cargo carryings and revenue results of each of the carriers that would now join together into the agreement. Otherwise, the information form focused primarily on the state of affairs in each of the agreement's sub-trades before the agreement was filed. This would be done by reference to the major commodities carried by the carriers to and from the United States in each sub-trade.

Using the actual commodities potentially affected by a new agreement as the chief focus of analysis was a vital component of the proposed rule. The proposed information form, while continuing to require the submission of aggregate data in certain areas, mainly would require each party to the new agreement to identify the commodities that have made up the bulk of its cargo in each sub-trade and then to submit data on the revenues it has realized from each of those commodities. This information was intended to give the Commission a reasonably thorough summary of pre-agreement activity in each sub-trade covered by the new agreement, as well as in the agreement's entire geographic scope. If the agreement should go into effect, that summary would serve as a baseline for analyzing the corresponding information later obtained through the post-implementation reports. In the NPR, the Commission stated:

> In sum, the proposed rule both changes the orientation of agreement review to that of the cargo being affected, and also calls for more refined and differentiated data from the carriers. These reforms should provide the Commission with improved and more useful indicators of the potential or actual impact of an agreement on the needs of shippers for good service at reasonable rates, and in particular whether the agreement might cause or has caused unfair or unreasonable conditions for specific commodities, classes of shippers or geographic areas.

[9] For example, if an agreement with ten sub-trades reported that it had market shares of 50 percent or more in five or more sub-trades, it would be a Class A agreement. By using that methodology rather than average market share, the proposed rule sought to focus on those agreements with significant market power spread through at least half of their total geographic scope.

59 FR at 62377.

Under the *reporting requirements* for effective Class A Agreements, the parties' market shares would continue to be tracked by sub-trade. In addition, the reporting requirements would mirror the information form in order to provide ''before and after'' depictions of the trade, with some additional provisions that can apply only to an effective agreement. For example, a new section entitled ''Independent Rate Actions'' was proposed for Class A conference agreements, which would require the submission of information designed to allow the Commission to monitor the level of independent rate activity (or the lack of such activity) on specific commodities.

4. Class B Agreements Under the Proposed Rule

As already stated, the proposed rule prescribed the same information form for Class B agreements as for Class A agreements. This would establish the same pre-agreement baseline. However, assuming the Class B agreement was allowed to go into effect, the reporting requirements would be limited to quarterly updates on market share, agreement-wide (as opposed to sub-trade) cargo and revenue results, membership in other agreements, and changes in port service.

5. Class C Agreements Under the Proposed Rule

An agreement that authorized service rationalization, such as space charters, coordination of service frequency and port rotations, and coordination of the size and capacity of vessels to be deployed by the parties, but did not authorize ''capacity management'' (or any of the other Class A/B activities), would be a Class C agreement under the proposed rule. The Commission noted that, although such agreements have rarely presented serious regulatory concerns, some oversight is necessitated by section 6(g)'s admonition against agreements that cause unreasonable reductions in service. For a Class C agreement, the proposed rule provided for information form and reporting requirements regarding membership in other agreements and service at the ports within the agreement's overall scope.

6. Other Amendments

The proposed rule contained a number of other amendments to the Commission's existing agreement regulations. For the most part, these amendments were not substantive and were designed to make the existing regulations consistent with the proposed rule, to eliminate certain outdated regulations, or to reorganize certain subparts of the existing regulations.

7. Carrier Costs and Profits

The Commission's obligation under section 6(g) to police against agreements that may cause, or have caused, unreasonable increases in transportation rates, and the 1984 Act's purpose of providing an efficient and economic transportation system in the ocean commerce of the United States, 46 U.S.C. app. 1701(2), raised the question whether these policies can or should be pursued by monitoring the costs or profits of the carriers to a particular agreement. The proposed rule did not include provisions on carrier costs or profits, but the Commission solicited comments on the lawfulness and feasibility of such provisions. Commenters were asked to address how such provisions might be structured, particularly given the proposed rule's focus on individual country sub-trades; whether costs or profits under a particular agreement can be measured accurately, particularly if the carriers to the agreement also have operations elsewhere; and whether arguments that an agreement is necessary to control costs or to improve profits are better explored in the context of an investigation of that agreement, rather than made the subject of regulations applicable to broad classes of agreements.

D. Summary of the Comments

The comments on the Proposed Rule were all filed by carriers or carrier organizations. No shippers, shipper organizations, government agencies or other maritime interests responded to the NPR. Comments were filed by:

—TACA, the Asia North America Eastbound Rate Agreement, the Transpacific Westbound Rate Agreement, the Inter-American Freight Conference,and twenty-one other conferences and discussion agreements, filing jointly (referred to below as the ''25 Agreements'');
—the Council of European & Japanese National Shipowners' Associations (''CENSA'');
—TSA, which adopted the comments of the 25 Agreements and filed additional comments on the special topic of capacity management programs;
—the Trans-Pacific Freight Conference of Japan, the Japan-Atlantic and Gulf Freight Conference, and their member lines (''Japan Conferences'');
—the India, Pakistan, Bangladesh, Ceylon and Burma Outward Freight Conference and the Calcutta, East Coast of India and Bangladesh/U.S.A. Conference (the ''Associated India/Pakistan Conferences''); and
—Hanjin Shipping Co., Ltd.

1. Hanjin

Hanjin's comments attacked the lawfulness of the proposed rule. The carrier made no counterproposals and suggested no alternatives, but merely urged that the rule be withdrawn.

Hanjin's central objection was to the proposed rule's model of generalized regulations that prescribe information requirements for classes of agreements; the gist of its position was that the Commission is restricted, as a matter of law, to requiring information only on an ''as needed'' basis for individual agreements. Hanjin contended that, when an agreement is first filed, the FMC's only authority is to ensure that the agreement complies with the content requirements of section 5 of the 1984 Act and does not transgress the standards of section 6(g), and that to discharge those functions the FMC does not need the information required under the proposed rule. Much of that information, Hanjin argued, would be overly burdensome to produce and is not sufficiently tied to the scope, size, or other specifics of a particular agreement. Similarly, with respect to effective agreements, Hanjin submitted that the Commission should act only through targeted investigations where information demands can be properly focused and limited.

Discussion Hanjin's arguments are incorrect. The Commission has ample statutory authority to promulgate general regulations governing the initial evaluation and subsequent surveillance of carrier agreements. Section 5(a) of the 1984 Act states specifically that ''[t]he Commission may *by regulation* prescribe the form and manner in which an agreement shall be filed *and the additional information and documents necessary to evaluate the agreement.*'' 46 U.S.C. app. 1704(a) (emphases added). In addition, the Commission has broad rulemaking authority under section 17(a) of the Act, *id.* app. 1716(a), and there is nothing in the language or legislative history of the Act that bars the application of that authority to carrier agreements. Hanjin does not acknowledge that the Commission has had in effect since 1984 extensive rulemaking-generated regulations governing the filing and monitoring of agreements, including regulations prescribing the current information form. It should also be pointed out that the Commission could obtain the same information set forth in the proposed

rule—both the new information form data and the correlated monitoring report data—by issuing a demand for a ''periodical or special report'' under section 15 of the 1984 Act, 46 U.S.C. app. 1714(a). However, the Commission believes that, over the long run, regular and universally applicable information gathering is less burdensome on the industry than *ad hoc* section 15 orders or investigative subpoenas, because it enhances predictable and consistent regulation and the information obtained can persuade the agency that more formal and costly investigations are not necessary.

2. Other Comments

Of the other commenters, none challenged the proposed rule's central thesis that changes to the FMC's information-gathering processes were required by the changes in the nature, scope and complexity of carrier agreements since 1984. The Japan Conferences, for example, said that they ''* * * do not oppose the concept embodied in the Proposed Rule which would enable the Commission to become better informed relative to newly filed agreement activity and their post-effective implementation.'' (Comments at 3). None of these commenters objected to the intensified treatment under the rule of rate discussion agreements, ''non-binding'' rate agreements, and agreements to discuss or exchange vessel-operating cost data. None argued against the rule's proposal to distinguish between Class A and Class B agreements on the basis of market share, and there were no objections to the rule's proposed demarcation of a 50 percent market share. None argued against the rule's intention to monitor the impact of effective agreements according to the revenue realized from leading commodities. None took issue with the rule's proposal to require by regulation—rather than by negotiated consent—the submission of reports at regular intervals for effective agreements, although issues were raised regarding the frequency of such reports.

E. Specific Issues

The following analysis of the specific issues raised by the comments is organized by subject matter. In general, the issues raised by the comments apply both to the proposed rule's revised information form and to the rule's new post-effective monitoring reports. Where an issue raised special concerns for either the information form or for the monitoring reports, that is indicated in the text.

1. Class A/B Activities

(a) Duplicative Filings

The members of the Japan Conferences are also members of three inter-conference ''policy agreements'' (FMC Nos. 206–010838, 206–008600, and 206–010707) that contain authority to discuss and agree on rate and service contract issues of common interest. The Conferences did not object to the fact that these agreements would be Class A/B agreements under the proposed rule, but argued that they should not be required to submit the same information for both the basic conference agreements and the inter-conference agreements:

> These supplementary agreements involve the identical Conference parties, the same TPFCJ and JAGFC trades and subtrades, the same vessels and services, and the same Conference rates and service contracts. . . . [T]he Proposed Rule should be revised to permit the information which is required to be submitted by the relevant conference to qualify as the supplementary arrangement's economic information submission.

(Comments at 6).

Discussion It is unnecessary to amend the rule to deal with this concern. Complaints from the members of an agreement that they are being asked to submit information that duplicates information submitted in connection with another agreement can and will be handled on a case-by-case basis, under the rule's waiver procedure.

(b) Non-binding Rate Authority That Can Only Be Implemented Through Other Agreements

A related issue was also raised by the Japan Conference lines, which stated that they ''also operate under space charter and sailing agreements within the Conference trades, as well as in other trades and beyond.'' (Comments at 2). Such agreements typically contain authority to discuss and agree upon rates on a ''non-binding'' basis, a Class A/B activity. The Japan Conferences argued, however, that under the terms of these agreements, any rate agreements arrived under them can only be implemented through the Conferences themselves, and so all relevant information about the impact of the smaller agreements would be provided to the Commission through the Conferences' submissions.

Discussion Again, such discrete, fact-specific situations will be left for the rule's waiver procedure. A waiver may well be appropriate for side agreements between two or more conference members that are subject to reporting requirements through their membership in the conference agreement itself. However, a different situation would be presented by an agreement allowing ''non-binding'' rate discussions between a conference line and non-conference line.

2. Information Form for Class A/B Agreements

(a) Scope of Requirement

The Japan Conferences raised a general objection to the proposed rule's requirement that all new agreements authorizing any of the Class A/B activities must file an information form, and to the Commission's intention, as stated in the proposed rule, to require all effective agreements that authorize any of the Class A/B activities to file equivalents of information forms in order to establish baselines for future monitoring. The Japan Conferences proposed instead that such requirements be imposed only on agreements with a 35 percent market share. This change, it was argued, would excuse ''smaller agreements which are likely never to threaten dominance in the trade they serve or ever to imperil the (section 6(g)) general standard * * *.'' (Comments at 10).

Discussion This suggested modification is rejected. The information form requirement for Class A/B agreements is triggered by the anticompetitive activities that such agreements authorize, rather than by market share. This is because the collusion on price or service that a Class A/B agreement would introduce into a trade has sufficiently serious implications for shippers and the foreign commerce of the United States that extensive information on the parties' pre-agreement prices and services is necessary. If the parties have a low market share initially, that may ease the agreement's initial review under section 6(g). However, the agreement's potential for unreasonable price increases or service reductions would always be present, particularly since the Commission cannot lawfully impose a term limit on an agreement's effectiveness. 46 U.S.C. app. 1705(f). If the parties should eventually obtain a high market share and if the agreement became the subject of a section 6(g)—investigation, comparisons with the pre-agreement profile of the trade would clearly be relevant. In addition, even a 35 percent market share may make the agreement parties the price leaders in the trade if the remaining 65 percent is spread out among many other carriers.

(b) Actual Versus Authorized Activity

The Associated India/Pakistan Conferences suggested that ''[a]s an additional question or, in the

alternative, the information form could query whether the parties actually do discuss or exchange data on operating costs, pool cargoes or revenues, etc., as the case may be.'' (Comments at 1).

Discussion This suggested amendment is rejected. It would be impractical to attempt to adjust the level of regulation according to whether the parties were or were not using the authority contained in the agreement. Agreements must be taken at face value, and permitted activities must be assumed to be actual activities. With regard to the information form, it should be noted that the parties would be violating the Shipping Act and the antitrust laws if they were already engaged in the activities that the newly filed agreement sought to authorize.

3. Market Share

As stated above, no commenter objected to the proposed rule's provision that an agreement that authorized at least one of the Class A/B activities and held market shares of 50 percent or more in half or more of its sub-trades would be classified as a Class A agreement for purposes of the rule's monitoring report requirements. However, there were some comments on how market share should be calculated.

(a) Definition of ''Sub-trade''

As stated above, the proposed rule defined ''sub-trade'' as all liner movements between each U.S. port range (Atlantic, Gulf and Pacific) and each foreign country within the overall scope of the agreement.

The 25 Agreements (joined by TSA) said that carriers ''do not necessarily'' collect and maintain data on cargo movements according to the proposed rule's definition, and that using that definition would result in a ''huge'' amount of data for some conferences. (Comments at 4). They would narrow the definition in two ways.

First, the United States should be considered as one unit (*i.e.*, no port ranges). The same argument was made by CENSA.

Second, it was argued that the Commission should * * *

* * * recognize that agreements may cover a large number of foreign countries, many of which are small and may be considered together by the agreement as one market. In such a case, the agreement should be allowed to provide data to the Commission regarding this group of foreign countries, rather than having to break down the data on a country-by-country basis. Accordingly, the Conferences suggest that the Commission allow the members of an agreement to provide the data in the manner in which they define their markets. If, in a particular case, the Commission believes more detailed data is required, it can request additional information.

(Comments at 5–6). A similar, though less specific, argument was made by the Japan Conferences, which contended that the Commission should allow the substitution of ''broader geographic ranges of countries wherever possible,'' in order to reduce the burden of complying with the Rule. (Comment at 13).

Discussion The question of how to define an agreement's sub-trades is extremely important, because much of the substantive information required by the final rule—not just market share—is to be collected and submitted by sub-trade.

Any deviation from the rule's definition of sub-trade, for either the U.S. side or for the foreign side, will be allowed only through the rule's waiver procedure. Further, the burden will be on the carriers to show that their marketing and pricing are done by multi-country regions rather than by individual countries, or, in the case of the United States, by the United States as one unit rather than by separate port ranges. If such a showing is made, then an appropriate adjustment from the rule's requirements can and should be made. The rule is intended to measure and monitor actual economic behavior, not to impose its own model on the industry.

It should be noted, however, that waivers of the definition of ''sub-trade'' could involve difficult issues of fact. For example, in the case of a newly filed agreement, the information form requires data from the agreement signatory carriers on their operations in the agreement trade and sub-trades before the agreement was filed, when the carriers presumably were not coordinating their marketing and pricing. Therefore, an attempt to construct a regional definition of ''sub-trade'' that could be used by all carriers for their information from data submissions will succeed only if it can be shown that the carriers, though operating individually, were nevertheless applying essentially similar regional marketing and pricing practices.

A somewhat easier situation may be presented by the monitoring reports, which track the market shares, services and revenue results of the agreement parties after the agreement has been implemented. For conference agreements at least, this would allow the use of the agreement common tariff as the indicator of the parties' marketing and pricing practices, and it should not be difficult to define the agreement's sub-trades according to the construction of the agreement tariff. Similarly, a joint service operated by a single entity, *see* 46 U.S.C. app. 1709(e), would presumably be utilized only one tariff.

Because efforts to agree upon an alternative definition of ''sub-trade'' for a particular agreement may be arduous and time-consuming, the final rule provides that a waiver of the rule's definition must be obtained in advance of the required information submission, whether that be an information form or a monitoring report.

(b) Market Shares of Non-member Carriers

CENSA, the Japan Conferences and the Associated India/Pakistan Conferences argued that they should not be required to produce market share data for carriers not parties to their agreements.

Discussion This suggested modification is rejected. The current information form already requires the parties to a new agreement to provide ''estimates (or precise information where available) of non-party liner operator market share (shown either for each individual operator or for all operators collectively).'' 46 CFR part 572, at 314 (1994). The final rule is thus only an incremental refinement of an existing requirement. The rule requires that non-party market shares be stated by individual liner operator in order that the true extent of non-party competition can be gauged accurately; as observed above, an agreement with a market share of only 35 percent could nevertheless have significant market power if the non-party carriers all have small market shares.

(c) Cargo Not Measured in TEUs

The proposed rule required market share, cargo carrying and revenue results to be measured by TEUs. The 25 Agreements and the Associated India/Pakistan Conferences pointed out that data on breakbulk and certain other types of cargo are not available in TEUs.

Discussion The final rule clarifies that the member lines of an agreement should include only containerized cargo (stated in TEUs) in their information submissions, if the cargo they carry in the agreement trade—or sub-trade, if that is the focus of the particular report—is predominantly containerized. If the cargo they carry is predominately non-containerized, the carriers' reports of market share, cargo carryings and revenue results should include only non-containerized cargo. The rule does not impose a particular unit of measure of non-containerized cargo, requiring

only that the unit employed be stated clearly and applied consistently.

4. Reports on Cargo Carryings

In response to a comment by the Associated India/Pakistan Conferences, the final rule clarifies that reports on cargo carryings should include cargo not subject to tariff filing.

5. Reports on Carrier Revenues

The comments on the proposed rule's provisions for the submission of carrier revenue data focused on the commercial sensitivity of such data. The commenters—the 25 Agreements, CENSA and the Japan Conferences—were apparently concerned that reporting individual carrier revenue data to the Commission, as the rule would require, will result in exposure of confidential business information. Three protective limitations were proposed:

—Conferences with four or more members would provide total revenue and average-revenue-per-TEU but on an aggregated, agreement-wide basis rather than on a line-by-line basis. It was argued that this would give the Commission the necessary information on the agreement's impact, while safeguarding the confidentiality of the revenue data.

—Conferences with three or fewer members should be exempt from providing revenue data altogether. The 25 Agreements contended that even the aggregate approach is not sufficiently protective for smaller conferences ''***because even with an average, there are so few figures contributing to the average, the average revenue per line is likely to be fairly obvious.'' (Comments at 7). It was also submitted that small conferences often do not have secretariats or other central staff who can protect sensitive information, and that the demands of the proposed rule would be especially burdensome for small conferences.

—Rate discussion agreements which do not have binding rate-making authority should be exempt from providing revenue data if their membership includes carriers who belong to a conference. The rationale was that in such cases the Commission would obtain the carriers' revenue data through the conference's reporting. It was also argued that, like small conferences, discussion agreements generally do not have a central staff to collect the data from the member lines and maintain its confidentiality.

Discussion These limitations are rejected. By requiring individual carrier revenue data, the rule recognizes that Shipping Act agreements, unlike a merger, maintain the separate trade identities of their parties (with the limited exception of joint services). Thorough and accurate regulation of these ongoing price and service consortia requires knowledge of the business results of the actual operating entities. The rule's emphasis on sub-trades also requires individual carrier data, since a particular agreement sub-trade may not be served by all the parties to the agreement. Similarly, individual carrier data will further appropriate oversight of multiple agreements that are connected by common parties.

The comments would have the form and manner of appropriate regulation determined, not by the carriers that are the regulated entities under the Shipping Act, but by the form of organization that the carrier choose for themselves. The requirement for individual carrier data accommodates the apparent trend in ocean shipping away from traditional conferences, which have featured relatively independent chairmen and established central offices, and toward looser discussion agreements administered in some cases by rotation among the member lines. If this trend should continue, the excuse offered by the comments as to why even aggregate data should not be required from some agreements might eventually be raised for all agreements.

Taken on its own terms, the suggested distinction between conference is flawed: A three-member conference serving a small trade may well have a dominant market share, and therefore require careful monitoring. More generally, small conferences do not necessarily mean small member lines; a relatively small conference may have as members large carriers with established and sophisticated information systems. The proposal for rate discussion agreements would be workable only if all of the members of a particular discussion agreement were also members of a conference *and* if the discussion agreement and the conference agreement had identical geographic scopes. In such a situation, a waiver might be merited to avoid duplicative reporting as discussed above, but a general exemption is unworkable and in appropriate.

With regard to the carriers' concern about disclosure of their revenue data, there is no reasonable ground for anticipating improper public use of such data by the Commission. Once received by the Commission, revenue data is protected under section 6(j) of the 1984 Act and is exempt from disclosure under the Freedom of Information Act.[10]

6. Carriage and Revenues Data by Leading Commodities in Each Sub-trade

The heart of the proposed rule can be found in parts VI and VII of the information form for Class A/B agreements and the corresponding parts VI and VII of the monitoring report for Class A agreements. These provisions required each member line of such an agreement to submit extensive data for each ''top 10'' commodity carried in each sub-trade.

The provisions triggered strong opposition from most of the commenters, particularly the requirement in the two parts VII that each carrier provide detailed information on how it carried each major commodity in each sub-trade (*i.e.*, TEUs carried port-to-port under tariff rates; TEUs carried under intermodal tariff rates; TEUs carried port-to-port under service contracts; and TEUs carried in intermodal service under service contracts) and then the average revenue per TEU realized by the carrier from each type of carriage. The 25 Agreements, for example, contended:

> Determining the method by which cargo moves, *e.g.*, tariff vs. service contract, port-to-port vs. intermodal, would likely require a review of every bill of lading for every shipment in the trade. The potential cost and burden of performing such a review is staggering.

(Comments at 11).

Discussion Significant revisions to these sections of the proposed rule are warranted in response to the concerns of the commenters. Specifically, each member line will be required to provide total carriage and average revenue data for each leading commodity in each sub-trade, but will no longer be required to calculate such data separately for port-to-port and intermodal services, or for tariff and service contract services. This modification essentially adopts an alternative offered by the 25 Agreements (except that the Agreement urged limitations on reporting revenue data which were identical to those already rejected above (*i.e.*, aggregate instead of individual line data, no reporting for small conferences, and so on)). As revised, the new regulations will obtain cargo and revenue data most directly relevant to review of an agreement under the section 6(g) general standard, while eliminating the aspects of the

[10] 5 U.S.C. 552(b)(4); *see, e.g., Gulf & Western Industries, Inc. v. United States*, 615 F.2d 527, 529 (D.C. Cir. 1979).

proposed rule that would have placed the greatest burden on the industry.

The comments addressed the ''top 10'' scheme only in passing; in response to a comment by the Associated India/Pakistan Conferences, the final rule clarifies that individual commodities should be identified at the 4-digit level of customarily used commodity coding schedules.

7. Port Service Data

Part VIII of the proposed information form required data on the number of calls by each member-line during the most recent 12-month period at each port covered by the agreement, and any change in the nature or type of service to be effected immediately ''by the agreement,'' including base port designations and frequency of vessel calls. Similar data was required by the proposed monitoring report for Class A agreements.

The 25 Agreements (joined by CENSA) suggested that ''port'' be limited to U.S. ports, ''* * * since the FMC does not require information regarding calls at foreign ports to fulfill its regulatory responsibilities.'' (Comments at 12). Also, they proposed that changes in service be clarified to mean only those changes ''* * * that are required by the agreement, rather than any changes made by an individual carrier for its own commercial reasons.'' (*Id.*).

Discussion The Commission disagrees that the impact of agreements on liner service in U.S. foreign trades can be adequately monitored by reference only to U.S. ports, but will make other modifications to this part of the Rule. The phrase ''by the agreement'' will be deleted from the information form, so that it is clear that each member line of a new agreement should state whether *it* (rather than ''the agreement'') will be making any changes in the nature or frequency of its service at any port covered by the agreement, once the agreement goes into effect. In the corresponding part of the monitoring report, the requirement that each member line list the number of calls at each port during the previous calendar quarter is deleted; instead, the lines are simply asked to describe any changes in the nature of their services at each agreement port, *e.g.*, serving a port by substituted rather than direct service.

8. Capacity Management Programs

The special provisions of the proposed rule that deal with agreements authoring ''capacity management'' or ''capacity regulation,'' including the identification of ''capacity management'' or ''capacity regulation'' as one of the Class A/B activities, are deleted. There are now no agreements on file with the Commission containing such programs, and accordingly there is no need at present for specific regulations addressing this unusual and highly controversial area of carrier activity. Any future capacity management filings will be dealt with on a case-by-case basis. Through its statutory authorities in section 6(d) and 15 of the 1984 Act, the Commission will have sufficient means of analyzing any such agreements by obtaining and reviewing all planning documents, trade reports, capacity calculations, and any other relevant information that was used to negotiate the capacity limits in the new agreement. If reporting is necessary, that could be done through imposition of a permanent section 15 order.

9. Data on Independent Actions

For the monitoring reports filed by Class A conferences, the proposed rule required each member line to state the number of IAs taken on each leading commodity within each sub-trade, and the total number of TEUs of that commodity covered by the IAs. The 25 Agreements opposed this requirement on the ground of burdensomeness. The Japan Conferences claimed that ''the Conferences'' do not maintain data on the TEUs carried by their member lines under IA rates, and suggested that many of their member lines do not maintain such data either.

The proposed rule also required identification of each shipper for whom an IA was taken on a leading commodity during the calendar quarter, and a statement as to whether the shipper was a beneficial cargo owner, a non-vessel-operating common carrier, or a shipper's association. The 25 Agreements responded that IAs are often not taken for a specific shipper:

> Instead, they may be taken to service a particular market so that a carrier can break into that market or remain competitive in it. In such instances, therefore, the carriers obviously cannot provide any shipper information.

(Comments at 15–16). Similar objections were filed by the Japan Conferences and CEMSA, although the Japan Conferences were willing to provide data on the type of shipper for whom IAs had been taken.

Discussion The requirement for reporting the number of TEUs moving under the IAs taken for each leading commodity has been deleted. The final rule requires each member of a ''Class A'' conference to submit data both on the number of IAs taken on each leading commodity in each agreement sub-trade and, in part VII of the conference's monitoring report, on the average revenue per TEU realized by the member line from its carriage of each leading commodity in each sub-trade. The Commission believes that it will be able to accurately monitor the true level of IA activity within a conference by comparing and contrasting these two sets of data.

Reductions have also been made in the amount of shipper-related IA data. Rather than requiring the name of each shipper for whom an IA was taken during the calendar quarter, the final rule instead requires each member line to state how many of its total IA actions for each leading commodity during the quarter were taken to service specific shipper accounts (rather than for general commercial reasons) and of those, how many were taken for NVO accounts and how many for shippers' association accounts. These changes respond to observations of the commenters that many IAs are taken to preserve market share or to penetrate new markets, rather than for specific customers, and to the commenters' concerns about protecting the identity of those shippers for whom IA was taken.

10. Quarterly Reporting

Objections were raised to the proposed rule's requirements that monitoring reports be submitted on a quarterly basis. The Japan Conferences, for example, said that ''* * * economic trends in the ocean shipping business do not ordinarily change to any significant degree in the space of a three month period, or even over six months or a year.'' (Comments at 4). They asked that reports be submitted annually ''* * * or, certainly, with no greater frequency than semi-annually.'' *Id.* at 5).

Discussion The final rule retains the requirement for quarterly monitoring reports. The Commission specifically disagrees with the Japan Conferences' characterization of the cycles of international ocean shipping; the experience of the Pacific trades during 1995 was certainly to the contrary. More important, given the significant modifications and reductions made by the final rule to the information demands of the proposed rule, there is no basis to conclude on this record that quarterly reporting will be unduly burdensome or otherwise unreasonable. It should be pointed out again, however, that an individual waiver of the quarterly reporting requirement can be obtained under the proper circumstances.

11. Miscellaneous

The proposed monitoring report for Class A agreements required a statement as to whether the agreement is a conference or has capacity management provisions. This was meant to facilitate checking of the carriers' compliance with the special requirements for such agreements. The 25 Agreements viewed this as ''duplicative information'' (Comments at 15) that should be required only if there has been some change since the last report. As discussed above, the proposed rule's provisions for capacity management agreements have been deleted, but the requirement that a conference identify itself as such in its monitoring reports is retained to avoid any uncertainties from the fact that conference names often do not include the word ''conference.''

In response to a suggestion from the Associated India/Pakistan Conferences, the ''contact person'' provisions of the information forms and monitoring reports have been updated to include fax and telex numbers as well as cable addresses.

The number of copies required for an agreement filing by subpart 572.401 has been reduced from an original and ten copies to an original and seven copies. In addition, subpart 572.701 and the instructions for the Information Forms and Monitoring Reports have been clarified with respect to joint services.

12. Carrier Costs and Profits

The 25 Agreements and CENSA argued that data on profits and/or costs in the agreement trade are irrelevant to a section 6(g) analysis. The Japan Conferences were also opposed, but took a less dogmatic position:

> The Conferences do not contend that there will never be a case where it would be appropriate or necessary for the Commission to review cost or profit information, or that in a proper case involving a particular agreement, section 15 should not be used to demand such information.

(Comments at 14). Rather, they argued that rulemaking is too broad a procedure and is not tied to a specific need for such data. Also, they pointed out that the proposed rule is based on sub-trade data, and that cost and profit data by sub-trade would be very suspect.

Discussion: The Commission will not propose a further rulemaking at this time to capture cost and profit data. However, we wish to stress that the costs incurred and the profits realized by the carrier parties to a particular agreement could well be relevant to a section 6(g) analysis of that agreement, especially if purported revenue losses are being used to justify the agreement.

For the most part, these amended regulations will become effective thirty days after publication in the Federal Register. New agreements then will be required to comply with the revised information form provisions. However, the proper application of the new monitoring report provisions in 46 CFR 572.701–705 to agreements already in effect cannot be determined immediately, because the market share data necessary to separate Class A/B agreements into Class A and Class B are not readily available.

Accordingly, effectiveness of the monitoring report provisions of the final rule is stayed until further notice. The Commission will direct all existing Class A/B agreements to submit reports under section 15 of the 1984 Act that will include all the information demanded of new Class A/B agreements under the information form regulations, including market share data. Upon review of these reports, those agreements will be appropriately classified into Class A or Class B, the stay of monitoring report provisions will be lifted, and the orderly filing of the regular monitoring reports (including those applicable to Class C agreements) will begin.

For those agreements already in effect that are subject to negotiated reporting requirements, those requirements will remain in effect until the stay is lifted and the new reporting requirements become applicable. Also, the stay does not apply to the pre-existing obligation (now codified at 572.706–708) of certain agreements to submit minutes of their meetings.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions. The ocean carriers affected by the rule are not ''small organizations'' or ''small governmental jurisdictions'' as defined by 5 U.S.C. 601 and, as large and predominantly foreign-based enterprises, are not ''small business concerns'' as defined by 15 U.S.C. 632 and regulations issued thereunder.

The collection of information requirements contained in this rule has been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1995, and has been assigned OMB control number 3072–0045. Under the proposed rule, the incremental public reporting burden was estimated to range from an average of 46 to 144 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. With the modifications made to the proposed rule, the incremental public reporting burden for preparing responses to the collection of information requirements of the final rule is estimated to range from an average of 36 to 97 hours per response. Send comments regarding this burden estimate, including suggestions for reducing this burden, to Bruce A. Dombrowski, Deputy Managing Director, Federal Maritime Commission, Washington, DC 20573, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 46 CFR Part 572

Administrative practice and procedure; Maritime carriers; Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553 and sections 4, 5, 6, 10, 15 and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1703, 1704, 1705, 1709, 1714 and 1716, part 572 of Title 46, Code of Federal Regulations, is amended as follows:

PART 572—AGREEMENTS BY OCEAN COMMON CARRIERS AND OTHER PERSONS SUBJECT TO THE SHIPPING ACT OF 1984

1. The authority citation for part 572 continues to read as follows:

Authority: 5 U.S.C. 553, 46 U.S.C. app. 1701–1707, 1709–1710, 1712 and 1714–1717.

2. In § 572.103, the first sentence of paragraph (a), the first two sentences of paragraph (b), the first sentence of paragraph (c), and the second sentence of paragraph (d) are revised; in paragraph (e), the third sentence is revised, the last sentence is revised, and a new sentence is added as follows:

§ 572.103 Policies.

(a) The Act requires that agreements be processed and reviewed, upon their initial filing, according to strict statutory deadlines. * * *

(b) The Act requires that agreements be reviewed, upon their initial filing, to ensure compliance with all applicable provisions of the Act and empowers the Commission to obtain information to conduct that review. This part identifies those classes of agreements which must be accompanied by information submissions when they are first filed, and sets forth the kind of information for each class of agreement which the

Commission believes relevant to that review. * * *

(c) In order to further the goal of expedited processing and review of agreements upon their initial filing, agreements are required to meet certain minimum requirements as to form. * * *

(d) * * * In order to minimize delay in implementation of routine agreements and to avoid the private and public cost of unnecessary regulation, the Commission is exempting certain classes of agreements from the filing requirements of this part.

(e) * * * This, however, requires greater monitoring of agreements after they have become effective, to assure continued compliance with all applicable provisions of the Act. * * * Only that information which is necessary to assure that Commission monitoring responsibilities will be fulfilled is requested. It is the policy of the Commission to keep the costs of regulations to a minimum and at the same time obtain information needed to fulfill its statutory responsibility.

* * * * *

3. In § 572.104, paragraphs (ee) and (ff) are redesignated (ii) and (jj); (dd) is redesignated (hh); (z) through (cc) are redesignated (dd) through (gg); (y) is redesignated (cc); (s) through (x) are redesignated (u) through (z); and (e) through (r) are redesignated (f) through (s); new paragraphs (e), (t), (aa), (bb), and (kk) are added; in newly redesignated (g), the last sentence is revised; newly redesignated (j) is revised; the heading of newly redesignated (o) is revised; newly redesignated (cc) is revised; and in newly redesignated (hh), the last sentence is revised to read as follows:

§ 572.104 Definitions.

* * * * *

(e) *Capacity management or capacity regulation agreement* means an agreement between two or more ocean common carriers which authorizes withholding some part of the capacity of the parties' vessels from a specified transportation market, without reducing the real capacity of those vessels. The term does not include sailing agreements or space charter agreements.

* * * * *

(g) *Conference agreement* * * * The term does not include joint service, pooling, sailing, space charter, or transshipment agreements.

* * * * *

(j) *Effective agreement* means an agreement approved pursuant to the Shipping Act, 1916, or effective pursuant to an exemption under that act, or effective under the Act.

* * * * *

(o) *Joint service agreement* * * *

* * * * *

(t) *Monitoring report* means the report containing economic information which must be filed at defined intervals with regard to certain kinds of agreements that are effective under the Act.

* * * * *

(aa) *Rate*, for purposes of this part, includes both the basic price paid by a shipper to an ocean common carrier for a specified level of transportation service for a stated quantity of a particular commodity, from origin to destination, on or after a stated effective date or within a defined time frame, and also any accessorial charges or allowances that increase or decrease the total transportation cost to the shipper.

(bb) *Rate agreement* means an agreement between ocean common carriers which authorizes agreement upon, on either a binding basis under a common tariff or on a non-binding basis, or discussion of, any kind of rate.

(cc) *Sailing agreement* means an agreement between ocean common carriers which provides for the rationalization of service by establishing a schedule of ports which each carrier will serve, the frequency of each carrier's calls at those ports, and/or the size and capacity of the vessels to be deployed by the parties. The term does not include joint service agreements, or capacity management or capacity regulation agreements.

* * * * *

(hh) *Space charter agreement* * * * The arrangement may include arrangements for equipment interchange and receipt/delivery of cargo, but may not include capacity management or capacity regulation as used in this subpart.

* * * * *

(kk) *Vessel-operating costs* means any of the following expenses incurred by an ocean common carrier: Salaries and wages of officers and unlicensed crew, including relief crews and others regularly employed aboard the vessel; fringe benefits; expenses associated with consumable stores, supplies and equipment; vessel fuel and incidental costs; vessel maintenance and repair expense; hull and machinery insurance costs; protection and indemnity insurance costs; costs for other marine risk insurance not properly chargeable to hull and machinery insurance or to protection and indemnity insurance accounts; and charter hire expenses.

§ 572.301 [Amended]

4. In § 572.301, paragraph (b) is amended by removing the words ''Information Form'' and the comma immediately thereafter.

§ 572.302 [Amended]

5. In § 572.302, paragraph (b) is amended by removing the words ''Information Form'' and the comma immediately thereafter.

§ 572.303 [Amended]

6. In § 572.303, paragraph (b) is amended by removing the words ''and Information Form.''

§ 572.304 [Amended]

7. In § 572.304, paragraph (b) introductory text is amended by removing the words ''and Information Form.''

§ 572.305 [Amended]

8. In § 572.305, paragraph (b) is amended by removing the words ''and Information Form.''

§ 572.306 [Amended]

9. In § 572.306, paragraph (b) is amended by removing the words ''and Information Form.''

§ 572.308 [Amended]

10. In § 572.308, paragraph (b) is amended by removing the words ''and Information Form.''

§ 572.309 [Amended]

11. In § 572.309, paragraph (a) introductory text, is amended by removing the words ''Information Form'' and the comma immediately thereafter.

12. In subpart D, the heading is revised to read as follows:

Subpart D—Filing of Agreements

13. In § 572.401, the heading and paragraphs (a)(1), (a)(2), (c), (d), and (e) are revised to read as follows:

§ 572.401 General requirements.

(a) * * *

(1) A true copy and 7 additional copies of the filed agreement;

(2) Where required by this part, an original and five copies of the completed Information Form Referenced at subpart E of this part; and

* * * * *

(c) Any agreement which does not meet the filing requirements of this section, including any applicable Information Form requirements, shall be rejected in accordance with § 572.601.

(d) Assessment agreements shall be filed and shall be effective upon filing.

(e) Parties to agreements with expiration dates shall file any

modification seeking renewal for a specific term or elimination of a termination date in sufficient time to accommodate the waiting period required under the Act.

* * * * *

§ 572.402 [Amended]

14. In § 572.402, paragraph (e)(2) is amended by revising the reference to ''§§ 572.501 and 572.502'' to read ''§§ 572.403 and 572.404,'' paragraph (f) is amended by revising the reference to ''§§ 572.501(b)(3), 572.501(b)(6) and 572.502(a)(1)'' to ''§§ 572.403(b)(3), 572.403(b)(6) and 572.404(a)(1),'' and paragraph (h) is removed.

§ 572.403 [Redesignated as § 572.405 and Amended]

15. Section 572.405 is removed and § 572.403 is redesignated § 572.405 with paragraphs (a) and (g)(3) revised as follows:

§ 572.405 Modifications of agreements.

* * * * *

(a) Agreement modifications shall be: filed in accordance with the provisions of 572.401 and in the format specified in 572.402; with the content and organization specified in 572.403 and 572.404 and in accordance with this section.

* * * * *

(g) * * *

(3) The filing of a republished agreement, as described in paragraph (g)(2) of this section, may be accomplished by filing only an executed original true copy. No Information Form requirements apply to the filing of a republished agreement.

§ 572.501 [Redesignated as § 572.403 and Amended]

16. Section 572.501 is redesignated 572.403 and paragraphs (a) and (b) are amended by revising the references to ''§ 572.502'' to read ''§ 572.404.''

§ 572.406 [Redesignated as § 572.407]
§ 572.404 [Redesignated as § 572.406]

17. Section 572.406 is redesignated § 572.407 and 572.404 is redesignated § 572.406 and revised to read as follows;

§ 572.406 Application for waiver.

(a) Upon showing of good cause, the Commission may waive the requirements of §§ 572.401, 572.402, 572.403, 572.404 and 572.405.

(b) Requests for such a waiver shall be submitted in advance of the filing of the agreement to which the requested waiver would apply and shall state:

(1) The specific provisions from which relief is sought;

(2) The special circumstances requiring the requested relief; and

(3) Why granting the requested waiver will not substantially impair effective regulation of the agreement.

§ 572.202 [Redesignated as § 572.404 and Amended]

18. Section 572.502 of subpart E is redesignated § 572.404 and paragraphs (a) and (b)(1) are amended by revising the reference to ''§ 572.501'' to read ''§ 572.403.''

19. The heading of subpart E is removed and new subpart E is added as follows:

Subpart E—Information Form Requirements

Sec.

572.501 General requirements.
572.502 Subject agreements.
572.503 Information form for Class A/B agreements.
572.504 Information form for Class C agreements.
572.505 Application for waiver.

Subpart E—Information Form Requirements

§ 572.501 General requirements.

(a) Certain agreements must be accompanied, upon their initial filing, with an Information Form setting forth information and data on the filing parties' prior cargo carryings, revenue results and port service patterns.

(b) The filing parties to an agreement subject to this subpart shall complete and submit an original and five copies of the applicable Information Form at the time the agreement is filed. Copies of the applicable Form may be obtained at the Office of the Secretary or by writing to the Secretary of the Commission.

(c) A complete response in accordance with the instructions on the Information Form shall be supplied to each item. Whenever the party answering a particular part is unable to supply a complete response, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information.

(d) The Information Form for a particular agreement may be supplemented with any other information or documentary material.

(e) The Information Form and any additional information submitted in conjunction with the filing of a particular agreement shall not be disclosed except as provided in § 572.608.

§ 572.502 Subject agreements.

Agreements subject to this subpart are divided into two classes, Class A/B and Class C. When used in this subpart:

(a) Class A/B agreement means an agreement that is one or more of the following:

(1) A rate agreement as defined in § 572.104(aa) and § 572.104(bb);

(2) A joint service agreement as defined in § 572.104(o);

(3) A pooling agreement as defined in § 572.104(y);

(4) An agreement authorizing discussion or exchange of data on vessel-operating costs as defined in § 572.104(kk); or

(5) An agreement authorizing regulation or discussion of service contracts as defined in § 572.104(dd).

(b) Class C agreement means an agreement that is one or more of the following:

(1) A sailing agreement as defined in § 572.104(cc); or

(2) A space charter agreement as defined in § 572.104(hh).

§ 572.503 Information form for Class A/B agreements.

The Information Form for Class A/B agreements, with accompanying instructions that are intended to facilitate the completion of the Form, is set forth in appendix A of this part.

The instructions should be read in conjunction with the Shipping Act of 1984 and with this part 572.

§ 572.504 Information form for Class C agreements.

The Information Form for Class C agreements, with accompanying instructions that are intended to facilitate the completion of the Form, is set forth in appendix B of this part. The explanation and instructions should be read in conjunction with the Shipping Act of 1984 and 46 CFR part 572.

§ 572.505 Application for waiver.

(a) Upon a showing of good cause, the Commission may waive any part of the information form requirements of § 572.503 or § 572.504.

(b) A request for such a waiver must be approved in advance of the filing of the information form to which the requested waiver would apply. The Commission will take into account the presence or absence of shipper complaints in considering an application for a waiver. Requests for a waiver shall state:

(1) The specific requirements from which relief is sought;

(2) The special circumstances requiring the requested relief; and

(3) Why granting the requested waiver will not substantially impair effective regulation of the agreement, either during pre-implementation review or during post-implementation monitoring.

20. In § 572.601, paragraph (a) and the first sentence of paragraph (b)(1) are revised, as follows:

§ 572.601 Preliminary review—rejection of agreements.

(a) The Commission shall make a preliminary review of each filed agreement to determine whether the agreement is in compliance with the filing requirements of the Act and this part and, where applicable, whether the accompanying Information Form is complete or, where not complete, whether the deficiency is adequately explained or is excused by a waiver granted by the Commission under § 572.505.

(b)(1) The Commission shall reject any agreement that otherwise fails to comply with the filing and Information Form requirements of the Act and this part. * * *

* * * * *

21. In § 572.608, paragraph (b)(2) is revised, as follows:

§ 572.608 Confidentiality of submitted materials.

* * * * *

(b) * * *

(2) It is disclosed to either body of Congress or to a duly authorized committee or subcommittee of Congress.

* * * * *

22. In § 572.701, paragraphs (b), (c) and (d) are removed, paragraph (f) is redesignated (i) and is revised, paragraph (e) is redesignated (f) and is revised, paragraph (a)(1) is redesignated (d) and is revised, paragraph (a)(2) is redesignated (e) and the second sentence thereof is revised, a new paragraph (a) is added, a new paragraph (b) is added, a new paragraph (c) is added, a new paragraph (g) is added, and a new paragraph (h) is added, as follows:

§ 572.701 General requirements.

(a) Certain agreements are required to submit quarterly Monitoring Reports on an ongoing basis for as long as they remain in effect, setting forth information and data on the agreement member lines' cargo carryings, revenue results and port service patterns under the agreement.

(b) Certain agreements are required to submit minutes of their meetings for as long as they remain in effect.

(c) *Joint Services.* For purposes of the requirements of this Subpart, a joint service filing its own Monitoring Report shall file as one carrier. If a joint service is a party to another agreement that is otherwise subject to the requirements of this Subpart, the joint service shall be treated as one member of that agreement for purposes of that agreement's Monitoring Reports.

(d) *Address.* Monitoring Reports and minutes required by this subpart should be addressed to the Commission as follows: Director, Bureau of Economics and Agreement Analysis, Federal Maritime Commission, Washington, DC 20573–0001. Copies of the applicable Monitoring Report form may be obtained from the Bureau of Economics and Agreement Analysis. The lower, left-hand corner of the envelope in which each Monitoring Report or set of minutes is forwarded should indicate the nature of its contents and the related agreement number. For example: ''Monitoring Report, Agreement 5000'' or ''Minutes, Agreement 5000.''

(e) *Electronic filing.* * * * Detailed information on electronic transmission is available from the Commission's Bureau of Economics and Agreement Analysis.

* * * * *

(f) *Time for filing.* Monitoring Reports shall be filed within 30 days of the end of each calendar quarter. Other documents shall be filed within 30 days of the end of a quarter-year, a meeting, or the receipt of a request for documents.

(g) A complete response in accordance with the instructions on the applicable Monitoring Report shall be supplied to each item. Whenever the party answering a particular part is unable to supply a complete response, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information.

(h) A Monitoring Report for a particular agreement may be supplemented with any other information or documentary material.

(i) *Confidentiality.* (1) The Monitoring Reports, minutes, and any other additional information submitted for a particular agreement will be exempt from disclosure under 5 U.S.C. 552, except to the extent:

(i) It is relevant to an administrative or judicial action or proceeding; or

(ii) It is disclosed to either body of Congress or to a duly authorized committee or subcommittee of Congress.

(2) Parties may voluntarily disclose or make Monitoring Reports, minutes or any other additional information publicly available. The Commission must be promptly informed of any such voluntary disclosure.

§ 572.202 [Redesignated as § 572.706 and Amended]

23. Section 572.702 is redesignated 572.706, the heading thereof is revised, and a new paragraph (d) is added, as follows:

§ 572.706 Filing of minutes—including shippers' requests and complaints, and consultations.

* * * * *

(d) *Serial numbers.* (1) Each set of minutes filed with the Commission should be assigned a number. For example, a conference filing minutes of its first meeting upon the effective date of this rule should assign Meeting No. 1 to its minutes, the next meeting will be assigned Meeting No. 2, and so on.

(2) Any conference or rate agreement which, for its own internal purposes, has a system for assigning sequential numbers to its minutes in a manner which differs from that set forth in paragraph (d)(1) of this section may continue to utilize its own system thereof.

§ 572.703 [Redesignated as § 572.707 and Amended]

24. Section 572.703 is redesignated 572.707, and the reference to ''§ 572.702'' in the introductory text is revised to read ''§ 572.706.''

§ 572.704 [Redesignated as § 572.909 and Revised]

25. Section 572.704 is redesignated 572.709 and is revised as follows:

§ 572.709 Application for waiver.

(a) Upon a showing of good cause, the Commission may waive any requirement of this subpart.

(b) A request for such a waiver must be approved in advance of the filing of the Monitoring Report or minutes to which the requested waiver would apply. The Commission will take into account the presence or absence of shipper complaints in considering an application for a waiver. Requests for a waiver shall state:

(1) The specific requirements from which relief is sought;

(2) the special circumstances requiring the requested relief; and

(3) why granting the requested waiver will not substantially impair effective regulation of the agreement.

26. A new § 572.702 is added to read as follows:

§ 572.702 Agreements subject to Monitoring Report requirements.

(a) Agreements subject to the Monitoring Report requirements of this subpart are divided into three classes, Class A, Class B and Class C. When used in this subpart:

(i) *Class A agreement* means an agreement that is subject to the definition set forth in § 572.502(a) and has market shares of 50 percent or more in half or more of its sub-trades.

(2) *Class B agreement* means an agreement that is subject to the definition set forth in § 572.502(a) but does not have market shares of 50 percent or more in half or more of its sub-trades.

(b) Classification of an agreement as ''Class A'' or ''Class B'' for purposes of its reporting obligations under this subpart shall be done by the Bureau of Economics and Agreement Analysis, based in the first instance on the market share data reported on the agreement's Information Form pursuant to § 572.503, or on similar data otherwise obtained. Thereafter, at the beginning of each calendar year, the Bureau of Economics and Agreement Analysis shall determine whether the agreement should be classified as ''Class A'' or ''Class B'' for that year, based on the market share data reported on the agreement's quarterly Monitoring Report for the third quarter (July–September) of the previous calendar year.

(c) *Class C agreement* means an agreement that is subject to the definition set forth in § 572.502(b).

27. A new § 572.703 is added, as follows:

§ 572.703 Monitoring report for Class A agreements.

The Monitoring Report form for Class A agreements, with accompanying instructions that are intended to facilitate the completion of the Report, is set forth in appendix C of this part. The instructions should be read in conjunction with the Shipping Act of 1984 and with 46 CFR part 572.

28. A new § 572.704 is added, as follows:

§ 572.704 Monitoring report for Class B agreements.

The Monitoring Report form for Class B agreements, with accompanying instructions that are intended to facilitate the completion of the Report, is set forth in appendix D of this part. The instructions should be read in conjunction with the Shipping Act of 1984 and with 46 CFR part 572.

29. A new § 572.705 is added, as follows:

§ 572.705 Monitoring report for Class C agreements.

The Monitoring Report form for Class C agreements, with accompanying instructions that are intended to facilitate the completion of the Report, is set forth in appendix E of this part. The explanation and instructions should be read in conjunction with the Shipping Act of 1984 and 46 CFR part 572.

30. A new § 572.708 is added as follows:

§ 572.708 Retention of records.

Each agreement required to file minutes pursuant to this subpart shall retain a copy of each document listed in said minutes for a minimum period of 3 years after the date the document is distributed to the members. Such documents may be requested by the Director, Bureau of Economics and Agreement Analysis, in writing by reference to a specific minute, and shall indicate that the documents will be received in confidence. Requested documents shall be furnished by the parties within the time specified.

31. Section 572.902 is revised as follows:

§ 572.702 Falsification of reports.

Knowing falsification of any report required by the Act or this part, including knowing falsification of any item in any applicable Information Form or Monitoring Report, is a violation of the rules of this part and is subject to the civil penalties set forth in section 13(a) of the Act and may be subject to the criminal penalties provided for in 18 U.S.C. 1001.

§ 572.991 [Amended]

32. Section 572.991 is amended by revising the reference to ''the Paperwork Reduction Act of 1980, Public Law 96–511'' to read ''the Paperwork Reduction Act of 1995, Public Law 104–13'' and by revising the reference to ''section 3507(f)'' to read ''section 3507(a)(3).''

33. Appendix A to Part 572 is revised to read as follows:

Appendix A to Part 572—Information Form for Class A/B Agreements and Instructions

Instructions

All agreements between ocean common carriers that are Cass A/B agreements as defined in 46 CFR 572.502(a) must be accompanied by a completed Information Form for such agreements. A complete response must be supplied to each part of the Form. Where the party answering a particular part is unable to supply a complete response, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information. For purposes of the requirements of this Form, if one of the agreement signatories is a joint service operating under an effective agreement, that signatory shall respond to the Form as a single agreement party. All sources must be identified.

Part I

Part I requires a statement of the full name of the agreement as also provided under 46 CFR 572.403.

Part II

Part II requires a list of all effective agreements covering all or part of the geographic scope of the filed agreement, whose parties include one or more of the parties to the filed agreement.

Part III(A)

Part III(A) requires a statement as to whether the agreement authorizes the parties to collectively fix rates under a common tariff, to agree upon rates on a non-binding basis, or to discuss rates. Such rate activities may be authorized by a conference agreement, an interconference agreement, an agreement among one or more conferences and one or more non-conference ocean common carriers, an agreement between two or more conference member lines, an agreement between one or more conference member lines and one or more non-conference ocean common carriers, or an agreement among two or more non-conference ocean common carriers.

Part III(B)

Part III(B) requires a statement as to whether the agreement authorizes the parties to establish a joint service.

Part III(C)

Part III(C) requires a statement as to whether the agreement authorizes the parties to pool cargo or revenues.

Part III(D)

Part III(D) requires a statement as to whether the agreement authorizes the parties to discuss or exchange data on vessel-operating costs as defined in 46 CFR 572.104(kk).

Part III(E)

Part III(E) requires a statement as to whether the agreement authorizes the parties to regulate or discuss service contracts.

Part IV

Part IV requires the market shares of all liner operators within the entire geographic scope of the agreement and in each sub-trade within the scope of the agreement, during the most recent calendar quarter for which complete data are available. A joint service shall be treated as a single liner operator, whether it is an agreement line or a non-agreement line. *Sub-trade* is defined as the scope of all liner movements between each U.S. port range within the scope of the agreement and each foreign country within the scope of the agreement. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound market shares should be shown separately.

U.S. port ranges are defined as follows:

Atlantic—Includes ports along the eastern seaboard from the northern boundary of Maine to, but not including, Key West, Florida. Also includes all ports bordering upon the Great Lakes and their connecting

waterways as well as all ports in the State of New York on the St. Lawrence River.

Gulf—Includes all ports along the Gulf of Mexico from Key West, Florida, to Brownsville, Texas, inclusive. Also includes all ports in Puerto Rico and the U.S. Virgin Islands.

Pacific—Includes all ports in the States of Alaska, Hawaii, California, Oregon and Washington. Also includes all ports in Guam, American Samoa, Northern Marianas, Johnston Island, Midway Island and Wake Island.

An application may be filed for a waiver of the definition of ''sub-trade,'' under the procedure described in 46 CFR 572.505. In any such application, the burden shall be on the filing carriers to show that their marketing and pricing practices have been done by ascertainable multi-country regions rather than by individual countries or, in the case of the United States, by broader areas than the port ranges defined herein. The carriers must further show that, though operating individually, they were nevertheless applying essentially similar regional practices.

The *formula for calculating market share* in the entire agreement scope or in a sub-trade is as follows:

The total amount of liner cargo carried on each liner operator's liner vessels in the entire agreement scope or in the sub-trade during the most recent calendar quarter for which complete data are available, divided by the total liner movements in the entire agreement scope or in the sub-trade during the same calendar quarter, which quotient is multiplied by 100. The calendar quarter used must be clearly identified. The market shares held by non-agreement lines as well as by agreement lines must be provided, stated separately in the format indicated.

If 50 percent or more of the total liner cargo carried by the agreement lines in the entire agreement scope or in the sub-trade during the calendar quarter was containerized, only containerized liner movements (measured in TEUs) must be used for determining market share. If 50 percent or more of the total liner cargo carried by the agreement lines was non-containerized, only non-containerized liner movements must be used for determining market share. The unit of measure used in calculating amounts of non-containerized cargo must be specified clearly and applied consistently.

Liner movements is the carriage of liner cargo by liner operators. *Liner cargoes* are cargoes carried on liner vessels in a liner service. A *liner operator* is a vessel-operating common carrier engaged in liner service. *Liner vessels* are those vessels used in a liner service. *Liner service* refers to a definite, advertised schedule of sailings at regular intervals. All these definitions, terms and descriptions apply only for purposes of the Information Form.

Part V

Part V requires, for each agreement member line that served all or any part of the geographic area covered by the agreement during all or any part of the most recent 12-month period for which complete data are available, a statement of each line's total liner cargo carryings within the geographic area, total liner revenues within the geographic area, and average revenue.

If 50 percent or more of the total liner cargo carried by all the agreement member lines in the geographic area covered by the agreement during the 12-month period was containerized, each agreement member line should report only its total carryings of containerized liner cargo (measured in TEUs) within the geographic area, total revenues generated by its carriage of containerized liner cargo, and average revenue per TEU. Conversely, if 50 percent or more of the total liner cargo carried by all the agreement member lines in the geographic area covered by the agreement during the 12-month period was non-containerized, each line should report only its total carryings of non-containerized liner cargo (specifying the unit of measurement used), total revenues generated by its carriage of non-containerized liner cargo, and average revenue per unit of measurement.

The Information Form specifies the format in which the information is to be reported. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound data should be stated separately.

Part VI

Part VI requires a list, for each sub-trade within the scope of the agreement, of the top 10 liner commodities (including commodities not subject to tariff filing) carried by all the agreement member lines during the same 12-month period used in responding to Part V, or a list of the commodities accounting for 50 percent of the total liner cargo carried by all the agreement member lines during the 12-month period, whichever list is longer. If 50 percent or more of the total liner cargo carried by all the agreement member lines in the sub-trade during the 12-month period was containerized, this list should include only containerized commodities. If 50 percent or more of the total liner cargo carried by all the agreement member lines in the sub-trade during the 12-month period was non-containerized, this list should include only non-containerized commodities. Commodities should be identified at the 4-digit level of customarily used commodity coding schedules. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound sub-trades should be stated separately.

Part VII

Part VII requires a statement of the cargo volume and revenue results experienced by each of the parties to the proposed agreement from each major commodity in each subtrade. The Information Form specifies the format in which the information is to be reported.

Part VIII

Part VIII is concerned with the levels of service at each port within the entire geographic scope of the agreement. Each of the agreement lines is required to provide the number of calls it made at each port over the 12-month period used in responding to Parts V, VI and VII, and also to indicate any immediate change it plans to make in the nature or type of service at a particular port after the agreement goes into effect.

Part IX(A)

Part IX(A) requires the name, title, address, telephone number and cable address, telex or fax number of a person the Commission may contact regarding the Information Form and any information provided therein.

Part IX(B)

Part IX(B) requires the name, title, address, telephone number and cable address, telex or fax number of a person the Commission may contact regarding a request for additional information or documents.

Part IX(C)

Part IX(C) requires that a representative of the agreement lines sign the Information Form and certify that the information in the Form and all attachments and appendices are, to the best of his or her knowledge, true, correct and complete. The representative is also required to indicate his or her relationship with the parties to the agreement.

Federal Maritime Commission

Information Form For Certain Agreements By Or Among Ocean Common Carriers

Agreement Number _____
(Assigned by FMC)

Part I Agreement Name:

Part II Other Agreements

Lists all effective agreements covering all or part of the geographic scope of this agreement, whose parties include one or more of the parties to this agreement.

Part III Agreement Type

(A) *Rate Agreements*
Does the agreement authorize the parties to collectively fix rates on a binding basis under a common tariff, or to agree upon rates on a non-binding basis, or to discuss rates?
Yes ☐ No ☐

(B) *Joint Service Agreements*
Does the agreement authorize the parties to establish a joint service?
Yes ☐ No ☐

(C) *Pooling Agreements*
Does the agreement authorize the parties to pool cargoes or revenues?
Yes ☐ No ☐

(D) *Vessel-Operating Costs*
Does the agreement authorize the parties to discuss or exchange data on vessel-operating costs?
Yes ☐ No ☐

(E) *Service Contracts*
Does the agreement authorize the parties to discuss or agree on service contract terms and conditions, on either a binding or non-binding basis?
Yes ☐ No ☐

Part IV Market Share Information

Provide the market shares of all liner operators within the entire scope of the agreement and within each agreement sub-trade during the most recent calendar quarter

for which complete data are available. The information should be provided in the format below:

MARKET SHARE REPORT FOR (INDICATE EITHER ENTIRE AGREEMENT SCOPE, OR SUB-TRADE NAME) TIME PERIOD

	TEUs or other unit of measurement	Percent
Agreement Market Share:		
Line A	X,XXX	XX
Line B	X,XXX	XX
Line C	X,XXX	XX
Total Agreement Market Share	X,XXX	XX
Non-Agreement Market Share:		
Line X	X,XXX	XX
Line Y	X,XXX	XX
Line Z	X,XXX	XX
Total Non-Agreement Market Share	X,XXX	XX
Total Market	X,XXX	100

Part V Cargo and Revenue Results Agreement-Wide

For each party that served all or any part of the geographic area covered by the entire agreement during all or any part of the most recent 12-month period for which complete data are available, state total cargo carrying in TEUs or other unit of measurement within the entire geographic area, total revenues within the geographic area, and average revenue per TEU or other unit of measurement. The same 12-month period must be used for each party. The information should be provided in the format below:

TIME PERIOD

Carrier	Total TEUs or other unit of measurement	Total revenues	Avg. revenue per TEU or other unit of measurement
A		$	$
B		$	$
C		$	$
Etc		$	$

Part VI Leading Commodities

For each sub-trade within the scope of the agreement, list the top 10 commodities carried by all the parties during the same time period used in responding to Part V, or list the commodities accounting for 50 percent of the total carried by all the parties during the same 12-month period, whichever list is longer. The same 12-month period must be used in reporting for each sub-trade. The information should be provided in the format below:

Time Period (Same as That Used in Responding to Part V)

I. Sub-Trade

A. First leading commodity
B. Second leading commodity
C. Third leading commodity etc.

II. Sub-Trade

A. First leading commodity etc.

Part VII Cargo and Revenue Results by Sub-Trade

For the same time period used in responding to Parts V and VI, and for each sub-trade within the scope of the agreement, and for each of the leading commodities listed for each sub-trade in the response to Part VI, and for each party, state the total TEUs (or other unit of measurement) carried and average gross revenue per TEU (or other unit of measurement).

The information should be provided in the format below:

Time Period (Same as That Used in Responding to Part V)

I. Sub-trade A
A. First leading commodity
1. Carrier A
(a) Total TEUs (or other unit of measurement) carried
(b) Average gross revenue per TEU (or other unit of measurement)
2. Carrier B
(a) etc.
B. Second leading commodity
1. Carrier A
(a) etc.
II. Sub-trade B
A. First leading commodity
1. etc.

Part VIII Port Service

For each port within the entire geographic scope of the agreement, state the number of port calls by each of the parties over the same time period used in responding to Parts V, VI and VII. The information should be provided in the format below:

TIME PERIOD

[Same as that used in responding to Part V]

	Port	Port	Port	Port	Port
Carrier A.					
Carrier B.					
Carrier C.					
Etc..					

Also, for each party, indicate any planned change in the nature or type of service (such as base port designation, frequency of vessel calls, use of indirect rather than direct service, etc.) to be effected at any port within the entire geographic scope of the agreement after the effective date of the agreement.

Part IX

(A) Identification of Person(s) to Contact Regarding the Information Form

(1) Name _____
(2) Title _____
(3) Firm Name and Business
_____
(4) Business Telephone Number
_____
(5) Cable Address, Telex or Fax Number
_____

(B) Identification of an Individual Located in the United States Designated for the Limited Purpose of Receiving Notice of an Issuance of a Request for Additional Information or Documents (see 46 CFR 572.606).

(1) Name _____
(2) Title _____
(3) Firm Name and Business
_____
(4) Business Telephone Number
_____
(5) Cable Address, Telex or Fax Number
_____

(C) Certification

This Information Form, together with any and all appendices and attachments thereto, was prepared and assembled in accordance with instructions issued by the Federal Maritime Commission. The information is, to the best of my knowledge, true, correct, and complete.

Name (please print or type)
_____
Title _____
Relationship with parties to agreement
_____
_____
Signature _____
Date _____

34. A new appendix B to part 572 is added to read as follows:

Appendix B to Part 572—Information Form for Class C Agreements and Instructions.

Instructions

All agreements between or among ocean common carriers that are Class C agreements as defined in 46 CFR 572.502(b) must be

accompanied by a completed Information Form for such agreements. A complete response must be supplied to the Form. Where the filing party is unable to supply a complete response, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information. For purposes of the requirements of this Form, if one of the agreement signatories is a joint service operating under an effective agreement, that signatory shall respond to the Form as a single agreement party. All sources must be identified.

Part I

Part I requires a statement of the full name of the agreement as also provided under 46 CFR 572.403.

Part II

Part II requires a list of all effective agreements covering all or part of the geographic scope of the filed agreement, whose parties include one or more of the parties to the filed agreement.

Part III

Part III is concerned with the level of service at each port within the entire geographic scope of the agreement. Each agreement line is required to state the number of calls it made at each port over the most recent 12-month period for which complete data are available, and also to indicate any immediate change it plans to make in the nature or type of service at a particular port after the agreement goes into effect.

Part IV(A)

Part IV(A) requires the name, title, address, telephone number and cable address, telex or fax number of a person the Commission may contact regarding the Information Form and any information provided therein.

Part IV(B)

Part IV(B) requires the name, title, address, telephone number and cable address, telex or fax number of a person the Commission may contact regarding a request for additional information or documents.

Part IV(C)

Part IV(C) requires that a representative of the agreement lines sign the Information Form and certify that the information in the Form and all attachments and appendices are, to the best of his or her knowledge, true, correct and complete. The representative is also required to indicate his or her relationship with the parties to the agreement.

Federal Maritime Commission

Information Form For Certain Agreements By or Among Ocean Common Carriers

Agreement Number _____
(Assigned by FMC)
Part I Agreement Name:

_____

Part II Other Agreements

List all effective agreements covering all or part of the geographic scope of this agreement, whose parties include one or more of the parties to this agreement.

Part III Port Service

For each port within the entire geographic scope of the agreement, state the number of port calls by each of the parties over the most recent 12-month period for which complete data are available. The information should be provided in the format below.

TIME PERIOD

	Port	Port	Port	Port	Port
Carrier A Carrier B Carrier C Etc.					

Also, for each party, indicate any planned change in the nature or type of service (such as base port designation, frequency of vessel calls, use of indirect rather than direct service, etc.) to be effected at any port within the entire geographic scope of the agreement after the effective date of the agreement.

Part IV

(A) Identification of Person(s) to Contact Regarding the Information Form
(1) Name _____
(2) Title _____
(3) Firm Name and Business

_____
(4) Business Telephone Number

_____
(5) Cable Address, Telex or Fax Number

_____

(B) Identification of an Individual Located in the United States Designated for the Limited Purpose of Receiving Notice of an Issuance of a Request for Additional Information or Documents (see 46 CFR 572.606).
(1) Name _____
(2) Title _____
(3) Firm Name and Business

_____
(4) Business Telephone Number

_____
(5) Cable Address, Telex or Fax Number

_____

(C) Certification

This Information Form, together with any and all appendices and attachments thereto, was prepared and assembled in accordance with instructions issued by the Federal Maritime Commission. The information is, to the best of my knowledge, true, correct, and complete.

Name (please print or type)

_____
Title _____
Relationship with parties to agreement

_____
Signature _____
Date _____

36. A new appendix C to part 572 is added to read as follows:

Appendix C to Part 572—Monitoring Report for Class A Agreements and Instructions

Instructions

A complete response must be supplied to each part of the Report. Where the party answering a particular part is unable to supply a complete response, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information. All sources must be identified.

Part I

Part I requires a statement of the full name of the agreement, and the assigned FMC number.

Part II

Part II requires a statement of any change occurring during the calendar quarter to the list of other agreements set forth in Part II of the Information Form.

Part III

Part III requires the filing party to indicate whether the agreement authorizes the parties to operate as a conference.

Part IV

Part IV requires the market shares of all liner operators within the entire geographic scope of the agreement and in each sub-trade within the scope of the agreement during the calendar quarter. A joint service shall be treated as a single liner operator, whether it is an agreement line or a non-agreement line.

Sub-trade is defined as the scope of all liner movements between each U.S. port range within the scope of the agreement and each foreign country within the scope of the agreement. Where the agreement covers both U.S. inbound and outbound line movements, inbound and outbound market shares should be shown separately.

U.S. port ranges are defined as follows:

Atlantic—Includes ports along the eastern seaboard from the northern boundary of

Maine to, but not including, Key West, Florida. Also includes all ports bordering upon the Great Lakes and their connecting waterways as well as all ports in the State of New York on the St. Lawrence River.

Gulf—Includes all ports along the Gulf of Mexico from Key West, Florida, to Brownsville, Texas, inclusive. Also includes all ports in Puerto Rico and the U.S. Virgin Islands.

Pacific—Includes all ports in the States of Alaska, Hawaii, California, Oregon and Washington. Also includes all ports in Guam, American Samoa, Northern Marinas, Johnston Island, Midway Island and Wake Island.

An application may be filed for a waiver of the definition of ''sub-trade,'' under the provisions described in 46 CFR 572.709. In any such application, the burden shall be on the agreement carriers to show that their marketing and pricing practices are done by ascertainable multi-country regions rather than by individual countries or, in the case of the United States, by broader areas than the port ranges defined herein. The Commission will also consider whether the alternate definition of ''sub-trade'' requested by the waiver application is reasonably consistent with the definition of ''sub-trade'' applied in the original Information Form filing for the agreement.

The *formula for calculating market share* in the entire agreement scope or in a sub-trade is as follows:

The total amount of liner cargo carried on each liner operator's liner vessels in the entire agreement scope or in the sub-trade during the calendar quarter, divided by the total liner movements in the entire agreement scope or in the sub-trade during the calendar quarter, which quotient is multiplied by 100. The market shares held by non-agreement lines as well as by agreement lines must be provided, stated separately in the format indicated.

If 50 percent or more of the total liner cargo carried by the agreement lines in the entire agreement scope or in the sub-trade during the calendar quarter was containerized, only containerized liner movements (measured in TEUs) must be used for determining market share. If 50 percent or more of the total liner cargo carried by the agreement lines was non-containerized, only non-containerized liner movements must be used for determining market share. The unit of measure used in calculating amounts of non-containerized cargo must be specified clearly and applied consistently.

Liner movements is the carriage of liner cargo by liner operators. *Liner cargoes* are cargoes carried on liner vessels in a liner service. A *liner operator* is a vessel-operating common carrier engaged in liner service. *Liner vessels* are those vessels used in a liner service. *Liner service* refers to a definite, advertised schedule of sailings at regular intervals. All these definitions, terms and descriptions apply only for purposes of the Monitoring Report.

Part V

Part V requires each agreement member line's total liner cargo carryings within the entire geographic area covered by the agreement during the calendar quarter, each line's total liner revenues within the geographic area during the calendar quarter, and average revenue.

If 50 percent or more of the total liner cargo carried by all the agreement member lines in the geographic area covered by the agreement during the calendar quarter was containerized, each agreement member line should report only its total carryings of containerized liner cargo (measured in TEUs) during the calendar quarter within the geographic area, total revenues generated by its carriage of containerized liner cargo, and average revenue per TEU. Conversely, if 50 percent or more of the total liner cargo carried by all the agreement member lines in the geographic area covered by the agreement during the calendar quarter was non-containerized, each agreement member line should report only its total carryings of non-containerized liner cargo during the calendar quarter (specifying the unit of measurement used), total revenues generated by its carriage of noncontainerized liner cargo, and average revenue per unit of measurement.

The Monitoring Report specifies the format in which the information is to be reported. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound data should be stated separately.

Part VI

Part VI requires a list, for each sub-trade within the scope of the agreement, of the top 10 liner commodities (including commodities not subject to tariff filing) carried by all the agreement member lines during the calendar quarter, or a list of the commodities accounting for 50 percent of the total liner cargo carried by all the agreement member lines during the calendar quarter, whichever list is longer. If 50 percent or more of the total liner cargo carried by all the agreement member lines in the sub-trade during the calendar quarter was containerized, this list should include only containerized commodities. If 50 percent or more of the total liner cargo carried by all the agreement member lines in the sub-trade during the calendar quarter was noncontainerized, this list should include only non-containerized commodities. Commodities should be identified at the 4-digit level of customarily used commodity coding schedules. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound sub-trades should be stated separately.

Part VII

Part VII requires a statement of the cargo volume and revenue results experience by each of the agreement lines from each major commodity in each sub-trade during the calendar quarter. The Monitoring Report specifies the format in which the information is to be reported.

Part VIII

Part VIII is required to be completed if Part III is answered ''YES.'' Each conference line is required to indicate the extent to which it has taken independent rate actions on each of the leading commodities in each of the sub-trades. Part VIII also inquires into the type of shipper for whom independent rate actions have been taken. The Monitoring Report specifies the format in which the information is to be reported.

Part IX

Part IX requires each of the agreement lines to indicate any change in the nature or type of service it provided at any port within the entire geographic range of the agreement during the calendar quarter.

Part X(A)

Part X(A) requires the name, title, address, telephone number and cable address, telex or fax number of a person the Commission may contact regarding the Monitoring Report and any information provided therein.

Part X(B)

Part X(B) requires that a representative of the agreement lines sign the Monitoring Report and certify that the information in the Report and all attachments and appendices are, to the best of his or her knowledge, true, correct and complete. The representative is also required to indicate his or her relationship with the parties to the agreement.

Federal Maritime Commission

Monitoring Report For Class A agreements Between or Among Ocean Common Carriers

Agreement Number _____
(Assigned by FMC)
Part I Agreement Name:

_____

Part II Other Agreements

Indicate any change occurring during the calendar quarter to the list of other agreements set forth in Part II of the Information Form.

Part III Conference Agreements

Does the agreement authorize the parties to operate as a conference?

Yes ☐ No ☐

Part IV Market Share Information

Provide the market shares of all liner operators within the entire geographic scope of the agreement and within each agreement sub-trade during the calendar quarter. The information should be provided in the format below:

MARKET SHARE REPORT FOR CALENDAR QUARTER

[Indicate either entire agreement scope, or sub-trade name]

	TEUs or other unit of measurement	Percent
Agreement Market Share:		
Line A	X,XXX	XX%
Line B	X,XXX	XX%
Line C	X,XXX	XX%

MARKET SHARE REPORT FOR CALENDAR QUARTER—Continued

[Indicate either entire agreement scope, or sub-trade name]

	TEUs or other unit of measurement	Percent
Total Agreement Market Share ..	X,XXX	XX%
Non-Agreement Market Share:		
Line X	X,XXX	XX%
Line Y	X,XXX	XX%
Line Z	X,XXX	XX%
Total Non-Agreement Market Share ..	X,XXX	XX%
Total Market	X,XXX	100%

Part V Cargo and Revenue Results Agreement-Wide

For each agreement member line, provide total cargo carryings (measured in TEUs or other unit of measurement) during the calendar quarter within the entire geographic area covered by the agreement, total revenues within the geographic area during the calendar quarter, and average revenue per TEU or other unit of measurement. The information should be provided in the format below:

CALENDAR QUARTER

Carrier	Total TEUs or other unit of measurement	Total revenues	Acg. Revenue per TEU or other unit of measurement
A	.....	$	$
B	.....	$	$
C	.....	$	$
Etc	.....	$	$

Part VI Leading Commodities

For each sub-trade within the scope of the agreement, list the top 10 commodities carried by all the parties during the calendar quarter, or list the commodities accounting for 50 percent of the total carried by all the parties during the calendar quarter, whichever list is longer. The information should be provided in the format below:

Calendar Quarter

I. Sub-trade
  A. First leading commodity
  B. Second leading commodity
  C. Third leading commodity etc.
II. Sub-trade
  A. First leading commodity etc.

Part VIII Cargo and Revenue Results by Sub-Trade

For each sub-trade within the scope of the agreement, and for each of the leading commodities listed for each sub-trade in the response to Part VI, and for each party, state the total TEUs (or other unit of measurement) carried and average gross revenue per TEU (or other unit of measurement).

The information should be provided in the format below:

Calendar Quarter

I. Sub-trade A
  A. First leading commodity
  1. Carrier A
  (a) Total TEUs (or other units of measurement) carried
  (b) Average gross revenue per TEU (or other unit of measurement)
  2. Carrier B)
  (a) etc.
II. Sub-trade B
  A. First leading commodity
  1. etc.

Part VIII Independent Rate Actions (if applicable)

For each sub-trade within the scope of the agreement, and for each of the leading commodities listed for each sub-trade in the response to Part VI, and for each party, state (a) the total number of independent rate actions taken during the calendar quarter applicable to that commodity moving in that sub-trade; (b) how many of the total were independent rate actions taken to service specific shipper accounts; (c) of those, how many were for non-vessel-operating common carriers, and how many were for shippers' associations. The information should be provided in the format below:

Calendar Quarter

I. Sub-trade A
  A. First leading commodity
  1. Carrier A
  (a) Number of IA rate actions
  (i) Number of IA rate actions taken to service specific shipper accounts
  (i)(a) Number taken to service non-vessel-operating common carrier accounts
  (1)(b) Number taken to service shippers' association accounts
  2. Carrier B
  (a) etc.
  B. Second leading commodity
  1. Carrier A
  (a) etc.
II. Sub-trade B
  A. First leading commodity
  1. etc.

Part IX Port Service

For each party, state any change in the nature or type of service (such as base port designation, frequency of vessel calls, use of indirect rather than direct service, etc.) effected at any port within the entire geographic scope of the agreement during the calendar quarter.

Part X

(A) Identification of Person(s) to Contact Regarding the Monitoring Report
(1) Name _____
(2) Title _____
(3) Firm Name and Business
_____
(4) Business Telephone Number
_____
(5) Cable Address, Telex or Fax Number
_____

(B) Certification

This Monitoring Report, together with any and all appendices and attachments thereto, was prepared and assembled in accordance with instructions issued by the Federal Maritime Commission. The information is, to the best of my knowledge, true, correct, and complete.

Name (please print or type)
_____
Title _____
Relationship with parties to agreement
_____
Signature _____
Date _____

37. A new appendix D to Part 572 is added to read as follows:

Appendix D to Part 572—Monitoring Report for Class B Agreements and Instructions.

Instructions

A complete response must be supplied to each part of the Report. Where the party answering a particular part is unable to supply a complete response, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information. All sources must be identified.

Part I

Part I requires a statement of the full name of the agreement, and the assigned FMC number.

Part II

Part II requires a statement of any change occurring during the calendar quarter to the list of other agreements set forth in Part II of the Information Form.

Part III

Part III requires the market shares of all liner operators within the entire geographic scope of the agreement and in each sub-trade within the scope of the agreement during the calendar quarter. A joint service shall be treated as a single liner operator, whether it is an agreement line or a non-agreement line.

Sub-trade is defined as the scope of all liner movements between each U.S. port range within the scope of the agreement and each foreign country within the scope of the agreement. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound market shares should be shown separately.

U.S. port ranges are defined as follows:

Atlantic—Includes ports along the eastern seaboard from the northern boundary of Maine to, but not including, Key West, Florida. Also includes all ports bordering

upon the Great Lakes and their connecting waterways as well as all ports in the State of New York on the St. Lawrence River.

Gulf—Includes all ports along the Gulf of Mexico from Key West, Florida, to Brownsville, Texas, inclusive. Also includes all ports in Puerto Rico and U.S. Virgin Islands.

Pacific—Includes all ports in the State of Alaska, Hawaii, California, Oregon and Washington. Also includes all ports in Guam, American Samoa, Northern Marinas, Johnston Island, Midway Island and Wake Island.

An application may be filed for a waiver of the definition of ''sub-trade,'' under the provisions described in 46 CFR 572.709. In any such application, the burden shall be on the agreement carriers to show that their marketing and pricing practices are done by ascertainable multi-country regions rather than by individuals countries or, in the case of the United States, by broader areas than the port ranges defined herein. The Commission will also consider whether the alternate definition of ''sub-trade'' requested by the waiver application is reasonably consistent with the definition of ''sub-trade'' applied in the original Information Form filing for the agreement.

The *formula for calculating market* share in the entire agreement scope or in a sub-trade is as follows:

The total amount of liner cargo carried on each liner operator's liner vessels in the entire agreement scope or in the sub-trade during the calendar quarter, divided by the total liner movement in the entire agreement scope or in the sub-trade during the calendar quarter, which quotient is multiplied by 100. The market shares held by non-agreement lines as by agreement lines must be provided, stated separately in the format indicated.

If 50 percent or more of the total liner cargo carried by the agreement lines in the entire agreement scope or in the sub-trade during the calendar quarter was containerized, only containerized liner movements (measured in TEUs) must be used for determining market share. If 50 percent or more of the total liner cargo carried by the agreement lines was non-containerized cargo, only non-containerized liner movements must be used for determining market share. The unit of measure used in calculating amounts of non-containerized cargo must be specified clearly and applied consistently.

Liner movements is the carriage of liner cargo by liner operators. *Liner cargoes* are cargoes carried on liner vessels in a liner service. A *liner operator* is a vessel-operating common carrier engaged in liner service. *Liner vessels* are those vessels used in a liner service. *Liner service* refers to a definite, advertised schedule of salings at regular intervals. All these definitions, terms and descriptions apply only for purposes of the Monitoring Report.

Part IV

Part IV requires each agreement member line's total liner cargo carrying within the entire geographic area covered by the agreement during the calendar quarter, each line's total liner revenues within the geographic area during the calendar quarter, and average revenue.

If 50 percent or more of the total liner cargo carried by all the agreement member lines in the geographic area covered by the agreement during the calendar quarter was containerized, each agreement member line should report only its total carrying of containerized liner cargo (measured in TEUs) during the calender quarter within the geographic area, total revenues generated by its carriage of containerized liner cargo, and average revenue per TEU. Conversely, if 50 percent or more of the total liner cargo carried by all the agreement member lines in the geographic area covered by the agreement during the calendar quarter was non-containerized, each agreement member line should report only its total carryings of non-containerized liner cargo during the calendar quarter (specifying the unit of measurement used), total revenues generated by its carriage of non-containerized cargo, and average revenue per unit of measurement.

The Monitoring Report specifies the format in which the information is to be reported. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound data should be stated separately.

Part V

Part V requires each of the agreement member lines to indicate any change in the nature or type of service it provided at any port within the entire geographic scope of the agreement during the calendar quarter.

Part VI(A)

Part VI(A) requires the name, title, address, telephone number and cable address, telex or fax number of a person the Commission may contact regarding the Monitoring Report and any information provided therein.

Part VI(B)

Part VI(B) requires that a representative of the agreement lines sign the Monitoring Report and certify that the information in the Report and all attachments and appendices are, to the best of his or her knowledge, true, correct and complete. The representative is also required to indicate his or her relationship with the parties to the agreement.

Federal Maritime Commission

Monitoring Report For Class B Agreements Between or Among Ocean Common Carriers

Agreement Number _____
(Assigned by FMC)

Part I Agreement

Name:

_____

Part II Other Agreements

Indicate any change occurring during the calendar quarter to the list of other agreements set forth in Part II of the Information Form.

Part III Market Share Information

Provide the market shares of all liner operators within the entire geographic scope of the agreement and within each sub-trade during the calendar quarter. The information should be provided in the format below:

MARKET SHARE REPORT FOR CALENDAR QUARTER

[Indicate either entire agreement scope, or sub-trade name]

	TEUs or other unit of measurement	Percent
Agreement Market Share:		
Line A	X,XXX	XX
Line B	X,XXX	XX
Line C	X,XXX	XX
Total Agreement Market Share	X,XXX	XX
Non-Agreement Market Share:		
Line X	X,XXX	XX
Line Y	X,XXX	XX
Line Z	X,XXX	XX
Total Non-Agreement Market Share	X,XXX	XX
Total Market	X,XXX	100

Part IV Cargo and Revenue Results Agreement-Wide

For each agreement member line, provide total cargo carryings (measured in TEUs or other unit of measurement) during the calendar quarter within the entire geographic area covered by the agreement, total revenues within the geographic area during the calendar quarter, and average revenue per TEU or other unit of measurement. The information should be provided in the format below:

CALENDAR QUARTER

Carrier	Total TEUs or other unit of measurement	Total revenues	Avg. revenue per TEU or other unit of measurement
A		$	$
B		$	$
C		$	$
Etc		$	$

Part V Port Service

For each party, state any change in the nature or type of service (such as base port designation, frequency of vessel calls, use of indirect rather direct service, etc.) effected at any port within the entire geographic scope of the agreement during the calendar quarter.

Part VI

(A) Identification of Person(s) to Contact Regarding the Monitoring Report

(1) Name _____
(2) Title _____
(3) Firm Name and Business

_____

(4) Business Telephone Number

(5) Cable Address, Telex or Fax Number

(B) Certification

This Monitoring Report, together with any and all appendices and attachments thereto, was prepared and assembled in accordance with instructions issued by the Federal Maritime Commission. The information is, to the best of my knowledge, true, correct, and complete.

Name (please print or type)

Title
Relationship with parties to agreement

Signature
Date

38. A new appendix E to part 572 is added to read as follows:

Appendix E to Part 572—Monitoring Report for Class C Agreements and Instructions

Instructions

A complete response must be supplied to the Report. Where the filing party is unable to supply a complete response, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information. All sources must be identified.

Part I

Part I requires a statement of the full name of the agreement, and the assigned FMC number.

Part II

Part II requires a statement of any change occurring during the calendar quarter to the list of other agreements set forth in Part II of the Information Form.

Part III

Part III requires a statement of any change in the nature or type of service at any of the ports within the entire geographic scope of the agreement.

Part IV(A)

Part IV(A) requires the name, title, address, telephone number and cable address, telex or fax number of a person the Commission may contact regarding the Monitoring Report and any information provided therein.

Part IV(B)

Part IV(B) requires that a representative of the agreement lines sign the Monitoring Report and certify that the information in the Report and all attachments and appendices are, to the best of his or her knowledge, true, correct and complete. The representative is also required to indicate his or her relationship with the parties to the agreement.

Federal Maritime Commission

Monitoring Report For Class C Agreements Between or Among Ocean Common Carriers

Agreement Number
(Assigned by FMC)

Part I Agreement

Name:

Part II Other Agreements

Indicate any change occurring during the calendar quarter to the list of other agreements set forth in Part II of the Information Form.

Part III Port Service

For each party, state any change in the nature or type of service (such as base port designation, frequency of vessel calls, use of indirect rather direct service, etc.) effected at any port within the entire geographic scope of the agreement during the calendar quarter.

Part IV

(A) Identification of Person(s) to Contact Regarding the Monitoring Report

(1) Name
(2) Title
(3) Firm Name and Business

(4) Business Telephone Number

(5) Cable Address, Telex or Fax Number

(B) Certification

This Monitoring Report, together with any and all appendices and attachments thereto, was prepared and assembled in accordance with instruments issued by the Federal Maritime Commission. The information is, to the best of my knowledge, true, correct, and complete.

Name (please print or type)

Title
Relationship with parties to agreement

Signature
Date

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96–6600 Filed 3–20–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–111; RM–8652, RM–8704]

Radio Broadcasting Services; Athens and Atlanta, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Atlantis Broadcasting Co., LLC, allots Channel 242A at Atlanta, Illinois, as the community's first local aural transmission service (RM–8704). We also deny the mutually exclusive proposal filed by WMSI, Inc., proposing the allotment of Channel 241A at Athens, Illinois, as the community's first local aural transmission service (RM–8652). *See* 60 FR 39143, August 8, 1995. Channel 242A can be allotted to Atlanta in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.1 kilometers (3.8 miles) southwest to avoid short-spacings to the licensed sites of Station WHOW-FM, Channel 240A, Clinton, Illinois, and Station KIHT(FM), Channel 242C1, St. Louis, Missouri, and to the application site (40–40–11 and 89–53–34) for Channel 243A, Farmington, Illinois. The coordinates for Channel 242A at Atlanta are North Latitude 40–13–22 and West Longitude 89–17–04. With this action, this proceeding is terminated.

DATES: Effective May 2, 1996. The window period for filing applications will open on May 2, 1996 and close on June 3, 1996.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95–111, adopted March 5, 1996, and released March 18, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by adding Atlanta, Channel 242A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc.96–6795 Filed 3–20–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 89–87; RM–6637]

Television Broadcasting Services; Bessemer and Tuscaloosa, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants an Application for Review filed by Channel 17 Associates, Ltd., licensee of Station WDBB, Channel 17, Tuscaloosa, Alabama, directed to the *Report and Order*. 55 FR 4884, February 12, 1990. In doing so, it grants the proposal to reallot Channel 17 to Bessemer, Alabama, and modify the Station WDBB license to specify Bessemer as the community of license. The reference coordinates for Channel 17 at Bessemer are 33–28–48 and 87–25–47. With this action, the proceeding is terminated.

EFFECTIVE DATE: April 22, 1996.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 89–87, adopted January 26, 1996, and released March 8, 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, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 m Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.606 [Amended]

2. Section 73.606(b), the Television Table of Allotments under Alabama, is amended by removing Tuscaloosa, Channel 17.

3. Section 73.606(b), the Television Table of Allotments under Alabama, is amended by adding Bessemer, Channel 17.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–6759 Filed 3–20–96; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 801, 814, 833, 836, and 852

RIN 2900–AH27

VA Acquisition Regulations: Administrative Amendments

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs Acquisition Regulations (VAAR) to correct typographical errors and to update office names and job titles due to administrative changes within the Department. Also, the threshold for Architect-Engineer short selection procedures and the time frame for filing a protest are revised to be consistent with the Federal Acquisition Regulation (FAR), as required by 41 U.S.C. 405 and 421.

EFFECTIVE DATE: March 20, 1996.

FOR FURTHER INFORMATION CONTACT: Don Kaliher, Acquisition Policy Division (95A), Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 565–4424.

SUPPLEMENTARY INFORMATION: This final rule consists of nonsubstantive changes and, therefore, is not subject to the notice and comment and effective date provisions of 5 U.S.C. 553. Also, this final rule is not a significant revision as defined in FAR 1.501–1.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–602, since it does not contain any substantive provisions. This final rule would not cause a significant effect on any entities. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

List of Subjects in 48 CFR Parts 801, 814, 833, 836, and 852

Administrative practice and procedure, Government procurement, Reporting and recordkeeping requirements.

Approved: March 8, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 48 CFR parts 801, 814, 833, 836, and 852 are amended as follows:

1. The authority citation for parts 801, 814, 833, 836 and 852 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

PART 801—VETERANS AFFAIRS ACQUISITION REGULATIONS SYSTEM

§ 801.602–3 [Amended]

2. In § 801.602–3, paragraph (a)(3)(i) is amended by removing ''Deputy Assistant Secretary for Facilities'' and adding, in its place, ''Chief Facilities Management Officer, Office of Facilities Management''; and paragraph (a)(3)(ii) is amended by removing ''Assistant Secretary for Acquisition and Facilities'' and adding, in its place, ''Assistant Secretary for Management''.

§ 801.602–7 [Amended]

3. Section 801.602–70 is amended by removing ''Marketing Center'' wherever it appears and adding, in its place, ''National Acquisition Center'', by removing ''Office of Facilities'' wherever it appears and adding, in its place, ''Office of Facilities Management'', and by removing ''(93D)'' wherever it appears and adding, in its place, '', Acquisition Review Division''.

4. In § 801.602–70, paragraph (a) introductory text is amended by removing ''Illionis'' and adding, in its place, ''Illinois''; paragraph (a)(4)(v) is amended by removing ''Service'' and adding, in its place, ''Schedule''; paragraph (d) is amended by removing ''Deputy Assistant Secretary for Facilities'' and adding, in its place, ''Chief Facilities Management Officer, Office of Facilities Management''; paragraph (g) is amended by removing ''813.103'' and adding, in its place, ''48 CFR 833.103''; and paragraph (j)(2) is amended by removing ''VHS&RA'' and adding, in its place, ''VHA''.

§ 801.602–71 [Amended]

5. Section 801.602–71 is amended by removing ''Office of Facilities'' wherever it appears and adding, in its place, ''Office of Facilities Management'', and by removing ''(93D)'' wherever it appears and adding, in its place, '', Acquisition Review Division''.

6. In § 801.602–71, paragraph (b) is amended by removing the heading ''*Veterans Health Services and Research Administration (VHS&RA) Field Facilities, VA Marketing Center, VA Supply Depots*'' and adding, in its place, ''*Veterans Health Administration (VHA) Field Facilities, VA National Acquisition Center*''; paragraph (b)(1) is amended by removing ''(93)'' and adding, in its place, '', Acquisition Review Division''; paragraph (b)(2) is amended by removing ''(023)'' and adding, in its place, ''(025)''; and paragraph (b)(3) is amended by removing ''(93)'' and adding, in its place, '', Program Development and Evaluation Division''.

§ 801.602–72 [Amended]

7. In § 801.602–72, paragraph (d)(6)(iv) is amended by removing ''Office of Facilities'' and adding, in its place, ''Office of Facilities Management''.

§ 801.602–73 [Amended]

8. Section 801.602–73 is amended by removing ''Veterans Administration'' and adding, in its place, ''Department of Veterans Affairs''.

§ 801.603–71 [Amended]

9. Section 801.603–71 is amended by removing ''Marketing Center'' wherever it appears and adding, in its place, ''National Acquisition Center''.

10. In § 801.603–71, paragraph (e) is amended by removing ''Director, VA Marketing Center'' and adding, in its place, ''Associate Deputy Assistant Secretary for the National Acquisition Center''.

§ 801.670–5 [Amended]

11. In § 801.670–5, paragraph (a)(2) is amended by removing ''Personnel and Labor Relations'' and adding, in its place, ''Human Resources Management''; and paragraph (b) is amended by removing ''Chief Medical Director'' and adding, in its place, ''Under Secretary for Health''; by removing ''Regional Directors'' and adding, in its place, Veterans Integrated Service Network Directors''; and by removing ''(93)'' and adding, in its place, '', Acquisition Review Division''.

§ 801.670–6 [Amended]

12. Section 801.670–6 is amended by removing ''VHS&RA'' and adding, in its place, ''VHA''.

§ 801.680 [Amended]

13. In § 801.680, paragraph (b) is amended by removing ''Supply'' and adding, in its place, ''Acquisition and Materiel Management''.

PART 814—SEALED BIDDING

§ 814.403 [Amended]

14. Section 814.403 is amended by removing ''14–403'' and adding, in its place, ''14.403''.

§ 814.404–70 [Amended]

15. Section 814.404–70 is amended by removing ''(93B)'' and adding, in its place, '', Acquisition Review Division,'', and by removing ''Deputy Assistant Secretary for Facilities (08)'' and adding, in its place, ''Chief Facilities Management Officer, Office of Facilities Management''.

§ 814.406–3 [Amended]

§ 814.406–4 [Amended]

16. Sections 814.406–3 and 814.406–4 are amended by removing ''(93B)'' wherever it appears and adding, in its place, '', Acquisition Review Division''.

17. In § 814.406–3, paragraph (a) is amended by removing ''Administrator'' and adding, in its place, ''Secretary''.

§ 814.407–71 [Amended]

18. In § 814.407–71, paragraph (a) introductory text is amended by removing ''Deputy Assistant Secretary for Facilities'' and adding, in its place, ''Chief Facilities Management Officer, Office of Facilities Management''.

PART 833—PROTESTS, DISPUTES, APPEALS

§ 833.102 [Amended]

19. In § 833.102, paragraph (a) is amended by removing ''Office of Facilities'' and adding, in its place, ''Office of Facilities Management''; and by removing ''Deputy Assistant Secretary for Facilities (08)'' and adding, in its place, ''Chief Facilities Management Officer, Office of Facilities Management''.

§ 833.103 [Amended]

20. Section 833.103 is amended by removing ''Office of Facilities'' wherever it appears in the text and in the footnote and adding, in its place, ''Office of Facilities Management'', by removing ''Deputy Assistant Secretary for Facilities (08)'' wherever it appears in the text and in the footnote and adding, in its place, ''Chief Facilities Management Officer, Office of Facilities Management'', by removing ''Deputy Assistant Secretary for Facilities'' wherever it appears and adding, in its place, ''Chief Facilities Management Officer, Office of Facilities Management'', and by removing ''(95B)'' wherever it appears in the text and in the footnote and adding, in its place, '', Acquisition Review Division''.

§ 833.103 [Amended]

21. In § 833.103, paragraph (b)(1) is amended by removing ''(93D)'' and adding, in its place, '', Acquisition Review Division''.

22. In § 833.103, the letter statement following paragraph (d) is amended by removing ''10 working days'' and ''10 workdays'' wherever it appears and adding, in its place, ''14 calendar days''.

§ 833.104 [Amended]

23. Section 833.104 is amended by removing ''(95B)'' wherever it appears and adding, in it place, '', Acquisition Review Division'', by removing ''Deputy Assistant Secretary for Facilities (08)'' wherever it appears and adding, in its place, ''Chief Facilities Management Officer, Office of Facilities Management'', and by removing ''Deputy Assistant Secretary for Facilities'' and adding, in its place, ''Chief Facilities Management Officer, Office of Facilities Management''.

§ 833.105 [Amended]

24. In § 833.105, paragraph (b) is amended by removing ''(95B)'' and adding, in its place, '', Acquisition Review Division''; and by removing ''Deputy Assistant Secretary for Facilities (08)'' and adding, in its place, ''Chief Facilities Management Officer, Office of Facilities Management''.

§ 833.212 [Amended]

25. Section 833.212 is amended by removing ''(93)'' wherever it appears and adding, in its place, '', Acquisition Review Division''.

26. In § 833.212, paragraph (a) is amended by removing ''Office of Facilities'' and adding, in its place, ''Office of Facilities Management''.

PART 836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

§ 836.208 [Amended]

27. Section 836.208 is amended by removing ''Deputy Assistant Secretary for Facilities'' and adding, in its place, ''Chief Facilities Management Officer, Office of Facilities Management''.

§ 836.209 [Amended]

28. Section 836.209 is amended by removing ''Deputy Assistant Secretary for Facilities'' and adding, in its place, ''Chief Facilities Management Officer, Office of Facilities Management,''.

§ 836.211 [Amended]

29. In § 836.211, paragraph (b) is amended by removing ''Deputy Assistant Secretary for Facilities'' and adding, in its place, ''Chief Facilities Management Officer, Office of Facilities Management''.

§ 836.371 [Amended]

30. In § 836.371, the section heading is amended by removing ''of'' and adding, in its place, ''to''.

§ 836.601 [Amended]

31. Section 836.601 is amended by removing ''38 U.S.C. 1820'' and adding, in its place, ''38 U.S.C. 3720''.

§ 836.602–2 [Amended]

32. In § 836.602–2, paragraph (a) is amended by removing ''Office of Facilities'' in both places and adding, in its place, ''Office of Facilities Management''; and paragraph (b) is amended by removing ''Supply'' and adding, in its place, ''Acquisition and Materiel Management''.

§ 836.602–4 [Amended]

33. Section 836.602–4 is amended by removing ''Deputy Assistant Secretary for Facilities'' and adding, in its place, ''Chief Facilities Management Officer, Office of Facilities Management,''.

§ 836.602–5 [Amended]

34. Section 836.602–5 is amended by removing ''$10,000'' from the section heading and adding, in its place, ''the Simplified Acquisition Threshold''; and by removing ''Deputy Assistant Secretary for Facilities'' and adding, in its place, ''Chief Facilities Management Officer, Office of Facilities Management''.

§§ 836.602–2 and 836.602–3 [Amended]

§ 836.606–72 [Amended]

35. Sections 836.602–2, 836.602–3, and 836.606–72, are amended by removing ''Deputy Assistant Secretary for Facilities'' wherever it appears and adding, in its place, ''Chief Facilities Management Officer, Office of Facilities Management''.

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

§ 852.210–70 [Amended]

36. In § 852.210–70(b), paragraph (b) of the clause is amended by removing ''Illustration s'' and adding, in its place, ''Illustrations''.

§ 852.210–76 [Amended]

37. Section 852.210–76 is amended by removing ''(APR 1984)'' from the clause heading and adding, in its place, ''(JUL 1989)''; and by adding in the clause ''and'' immediately after ''services performed commercially under Government order''.

§ 852.219–70 [Amended]

38. Section 852.219–70 is amended by adding in the clause heading ''(DEC 1990)'' immediately after ''VETERAN-OWNED SMALL BUSINESS''.

§ 852.236–83 [Amended]

39. In § 852.236–83, paragraph (b)(5) of the clause is amended by removing ''Secondary switchgear'' and the corresponding ''5'' the first time ''Secondary switchgear'' appears in the ''Values of Adjusting, Correcting, and Testing System'' table.

§ 852.236–88 [Amended]

40. In § 852.236–88(a), paragraph (a) of the clause is amended by removing ''cost of pricing data'' and adding, in its place, ''cost or pricing data''; and by removing ''15,804–6'' and adding, in its place, ''15.804–6''; and paragraph (a) of the clause in paragraph (b) of the section is amended by removing ''15,804–6'' and adding, in its place, ''15.804–6''.

§ 852.236–91 [Amended]

41. In § 852.236–91, paragraph (e) is amended by removing ''unusually severe whether'' and adding, in its place, ''unusually severe weather''.

[FR Doc. 96–6498 Filed 3–20–96; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 95–50; Notice 2]

RIN 2127–AF74

Federal Motor Vehicle Safety Standards; Reflecting Surfaces

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: In this final rule, NHTSA rescinds the Federal motor vehicle safety standard that regulates the reflectivity of specified metallic components located in front of the driver. This action is part of the agency's efforts to implement the President's Regulatory Reinvention Initiative. In issuing this rule, the agency concludes that rescinding the standard will not adversely affect motor vehicle safety.

DATES: *Effective Date:* This final rule is effective May 6, 1996.

Petitions for Reconsideration: Any petitions for reconsideration of this final rule must be received by NHTSA no later than May 6, 1996.

ADDRESSES: Any petition for reconsideration of this final rule should refer to the docket and notice number set forth in the heading of this notice and be submitted to: Administrator, NHTSA, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Van Iderstine, Office of Vehicle Safety Standards, Office of Safety Performance Standards, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590. Mr. Van Iderstine's telephone number is (202) 366–5280. The FAX number is (202) 366–4329.

SUPPLEMENTARY INFORMATION:

President's Regulatory Reinvention Initiative

NHTSA has undertaken a review of its regulations pursuant to the March 4, 1995, directive ''Regulatory Reinvention Initiative'' from the President to the heads of departments and agencies. During the course of this review, the agency identified several requirements and regulations that are potential candidates for rescission, including Federal Motor Vehicle Safety Standard No. 107, *Reflecting surfaces* (49 CFR § 571.107).

In this final rule, NHTSA concludes that Standard No. 107 can be rescinded without adversely affecting motor vehicle safety. That conclusion is based on the agency's finding that the vehicle manufacturers established a practice of using nonglossy materials and matte finishes on unregulated components as well as on regulated components. Since the manufacturers have elected to use non-glossy surfaces on components that are not subject to the standard, the agency concludes that rescinding the regulatory requirements will not result in the return of the glossy surfaces that originally prompted the agency to issue the standard. In reaching this conclusion, NHTSA also notes that the virtual elimination of metallic components within the driver's forward field of view has already reduced the effective scope of the standard to the level of insignificance.

Background

Standard No. 107 specifies reflectance requirements that apply to specified metallic components in the driver's forward field of view: the windshield wiper arms and blades, the inside windshield moldings, the horn ring and hub of the steering wheel assembly, and the inside rearview mirror frame and mounting bracket. The standard requires that the specular gloss of the surface of these components not exceed 40 units when tested. (''Specular gloss'' refers to the amount of light reflected from a test specimen.) The purpose of the standard

is to reduce the likelihood that glare from the regulated components will distract drivers or interfere with their vision.

Notice of Proposed Rulemaking

On June 26, 1995 (60 FR 32935), NHTSA published a notice of proposed rulemaking to rescind Standard No. 107. In reviewing the history of the standard, the agency cited its earlier termination of a rulemaking to extend Standard No. 107's specular gloss limits to non-metallic surfaces (54 FR 35011; August 23, 1989). NHTSA terminated that rulemaking after concluding that the non-metallic surfaces had not been shown to cause glare that would affect the driver's performance.

In proposing to rescind the standard, NHTSA regarded the 1989 termination as having a bearing on the continuance of the standard. NHTSA noted that matte finishes were being used on components in front of the driver and stated its belief that market forces would continue to favor matte finishes and surfaces for components in the driver's field of view, and would be reinforced in that respect by product liability concerns. Evidence of the influence of these factors may be found in the disappearance of steering wheel rings and metallic windshield mountings, and in the use of matte finishes on unregulated as well as regulated components.

Further, NHTSA stated that the need for the standard has been reduced by the increased use of non-metallic materials (hard plastic or rubber) for parts such as windshield wiper arms and blades, steering wheel assembly hubs, and inside rearview mirror frame and mounting brackets. The substitution of non-metallic surfaces removes these vehicle components from the scope of Standard No. 107.

NHTSA continued by noting that the decreasing tendency to use metal is also evident with respect to components not regulated by Standard No. 107. Since 1987, vehicle interior styling practices have favored a combination of hard plastic and padded faux leather, materials that do not reflect sufficient light to create glare.

NHTSA's Response to Public Comments on the NPRM

In response to the NPRM, NHTSA received comments from the Insurance Institute for Highway Safety (IIHS), Chrysler Corporation, the Truck Manufacturers Association, the Association of International Automobile Manufacturers, Inc., Vehicle Improvement Products Inc., the Advocates for Highway and Auto Safety (Advocates) and the State of Connecticut (Connecticut). All commenters, except for Advocates and Connecticut, supported rescission of the standard. The commenters that favored rescission agreed with NHTSA that established industry practices in using nonglossy materials and finishes on both regulated and unregulated components in the driver's forward field of view have eliminated the need for Standard No. 107. While IIHS agreed that Standard No. 107 should be rescinded, it objected to NHTSA's reliance on product liability considerations and recall procedures as rationales for the rescission.

In opposing the rescission, Advocates asserted that the defects authority would be inadequate as an alternative to the standard, in part because the rescission of the standard might enable the manufacturers to argue that a glossy surface could not be a ''defect,'' and in part because the defects process is protracted and may often prove inconclusive. In Advocates' view, product liability litigation was available before the adoption of the standard and would not constitute a changed fact that could justify rescinding the standard (citing a comment by IIHS on the agency's proposed rescission of Standard No. 211).

In rescinding Standard No. 107, NHTSA affirms its view that the presence of the defects authority and product liability considerations will act to constrain manufacturers from producing vehicles with high-gloss metallic surfaces. The agency regards these factors as real and effective constraints, whatever their limitations.

However, the agency's principal basis for rescission continues to be the evident and universal practice by manufacturers of designing their vehicles to avoid the use of these surfaces, whether or not regulated. The standard was promulgated at a time when the prevailing design practice favored the use of chrome and other metallic surfaces, inside the vehicle as well as outside. The move away from these surfaces has been in part a matter of trends in styling, but also a response to regulatory forces and to the imperative to cut costs.

The chrome steering wheel hub, for example, and the horn ring, are effectively barred by the installation of driver air bags. The metallic rear-view mirror mounts have been displaced by cheaper and easier-to-install adhesive mountings that attach directly to the window. The metallic windshield mounting ring has been replaced by mounting techniques that produce a better bond as well as a better appearance.

By referring in the NPRM to the effects of market forces, the agency was alluding to these specific measures. Despite Advocates' concerns, none of these measures appears vulnerable to being abandoned because of the dictates of fashion. They are real changes which have every likelihood of being permanent. Their collective effect has been to reduce the scope of Standard No. 107 almost to the vanishing point. In the agency's view, the standard no longer serves its purpose and may therefore be rescinded with no adverse effect on motor vehicle safety. The agency thus concurs with IIHS's view that the principal basis for rescission is that Standard No. 107 has ''become out of date.''

In an analogous rulemaking, NHTSA decided not to specify in Standard No. 108, *Lamps, reflective devices and associated equipment*, that headlamps and taillamps of motorcycles be illuminated at all times when the engine is running, because the motorcycle industry already provided such performance on almost all motorcycles. (See 26 FR 32899, June 25, 1981.)

The reasoning used to extend Standard No. 214, *Side impact protection*, to light trucks, which Advocates suggests as a precedent, is not apposite here. Although Advocates correctly noted that light trucks were already meeting the passenger car dynamic side impact protection requirements, the agency regarded the rapid proliferation of new light truck models as necessitating a standard that would prevent new models from falling below the level of current models. By contrast, the use of low-gloss, non-metallic surfaces throughout the vehicle has been the industry practice for years and shows no sign of changing. Further, the Standard No. 214 rulemaking involved a much more significant safety problem than the one addressed by Standard No. 107.

The State of Connecticut favored one uniform national standard and therefore opposed rescission of Standard No. 107. Once the rescission of Standard No. 107 becomes effective, the States will be free to adopt reflecting surface requirements differing from those in the rescinded standard since there will no longer be a Federal Motor Vehicle Safety Standard (FMVSS) to preempt non-identical State laws. Connecticut stated that without a Federal safety standard, there is a possibility that the 50 States will issue different (and possibly conflicting) standards on reflecting surfaces.

NHTSA does not share Connecticut's concern that rescission of Standard No.

107 will result in individual States regulating reflecting surfaces. There is not now, and there is not likely to be in the future, a safety problem from reflecting surfaces in the view of the driver. Thus, there will not be a safety problem for the States to regulate.

If a State is nevertheless disposed to regulate in this area, it may do so. The fact that no State has previously chosen to regulate components not regulated by Standard No. 107 is a good basis for believing that there is no need for States to regulate.

Effective Date

In the NPRM, NHTSA proposed that if a final rule rescinding Standard No. 107 is published, the effective date for the final rule be 30 days after publication in the Federal Register. NHTSA received no comments on this issue. Thus, the agency determines that there is good cause shown that an effective date earlier than 180 days after issuance is in the public interest. Following publication of the NPRM, the agency amended the provisions in 49 CFR § 553.35 regarding petitions for reconsideration to extend the period within which petitions may be filed to 45 days (60 FR 62221; December 5, 1995). Accordingly, the final rule will take effect 45 days after its publication in the Federal Register.

Rulemaking Analyses and Notices

1. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule was not reviewed under Executive Order 12866 (Regulatory Planning and Review). NHTSA has analyzed the impact of this rulemaking action and determined that it is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. The final rule does not impose any costs. If the elimination of the necessity for certifying compliance with Standard No. 107 enables vehicle and equipment manufacturers to use fewer resources in assessing the reflectivity of the components formerly covered by the Standard, there will be a slight cost savings. For these reasons, the impacts will be so minimal that preparation of a full regulatory evaluation is not warranted.

2. Regulatory Flexibility Act

NHTSA has also considered the impacts of this final rule under the Regulatory Flexibility Act. I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. As explained above, the rule will not impose any new requirements but will relieve a restriction for design of certain components in the driver's forward field of view. The final rule may have a very slight beneficial effect on small manufacturers and dealers of motor vehicle equipment since they will no longer have to certify compliance with a safety standard on reflecting surfaces. For these reasons, small businesses, small organizations and small governmental units which purchase motor vehicles will not be significantly affected by the final rule. Accordingly, a final regulatory flexibility analysis has not been prepared.

3. Executive Order 12612 (Federalism)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The agency has determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

4. National Environmental Policy Act

The agency also has analyzed this final rule for the purpose of the National Environmental Policy Act, and determined that it will not have any significant impact on the quality of the human environment.

5. Executive Order 12778 (Civil Justice Reform)

This final rule will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, tires.

In consideration of the foregoing, 49 CFR part 571 is amended as set forth below:

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

§ 571.107 [Removed]

2. Section 571.107 is removed and reserved.

Issued on: March 13, 1996.

Ricardo Martinez,

Administrator.

[FR Doc. 96–6745 Filed 3–20–96; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 960129018–6018–01; I.D. 030196B]

Groundfish of the Gulf of Alaska; Pacific Cod for Processing by the Inshore Component

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

ACTION: Correction to a closure.

SUMMARY: This document contains a correction to a closure (I.D. 030196B) which was published Wednesday, March 6, 1996 (61 FR 8888).

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), March 3, 1996, until 12 midnight, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION:

Background

The closure that is the subject of this correction prohibited directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area.

Need for Correction

As published, the closure contained an incorrect date.

Correction of Publication

Accordingly, the publication on March 6, 1996, of the closure (I.D. 030196B), which was the subject of FR Doc. 96–5228, is corrected as follows:

On page 8888, in the second column, the **EFFECTIVE DATE** is corrected to read as follows:

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), March 3, 1996, until 12 midnight, A.l.t., December 31, 1996.

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

Dated: March 13, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–6647 Filed 3–20–96; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 672

[Docket No. 960129018–6018–01; I.D. 031596A]

Groundfish of the Gulf of Alaska; Pacific Cod for Processing by the Inshore Component

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Pacific cod for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the allocation of Pacific Cod for processing by the inshore component in the Central Regulatory Area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), March 18, 1996, until 12 midnight, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the allocation of Pacific cod for processing by the inshore component in the Central Regulatory Area was established by the Final 1996 Harvest Specifications for Groundfish (61 FR 4304, February 5, 1996) as 38,610 metric tons (mt).

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the allocation of Pacific cod total allowable catch for processing by the inshore component in the Central Regulatory Area soon will be reached. The Regional Director established a directed fishing allowance of 33,610 mt, with consideration that 5,000 mt will be taken as incidental catch in directed fishing for other species in the Central Regulatory Area. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

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

Dated: March 18, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–6854 Filed 3–18–96; 2:20 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 56
Thursday, March 21, 1996

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–243–AD]

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes. This proposal would require installation of an automatic flight idle stop on the control quadrant in the flight compartment. This proposal is prompted by several reports of one or both power levers being moved aft of the flight idle stop on approach. The actions specified by the proposed AD are intended to prevent such movement of the power lever(s) during flight, which could result in the loss of power to one or both engines, as well as severe engine damage.

DATES: Comments must be received by April 19, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–243–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linkping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ruth E. Harder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1721; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–243–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–243–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, recently notified the FAA that an unsafe condition may exist on certain Saab Model SAAB SF340A and SAAB 340B series airplanes. The LFV advises that it received a report indicating that the flight crew on a Model SAAB 340B series airplane moved both power levers aft of the flight idle stop when the airplane was on approach. This movement of the power levers resulted in loss of power to both engines. Both engines sustained extensive mechanical damage due to propeller overspeed, which resulted in a forced landing. Additionally, there have been several other incidents where the flight crew on a Model SAAB 340B series airplane moved one or both power levers aft of the flight idle stop during flight.

When the power levers are moved aft of the flight idle stop into the beta range during flight, it is possible for air loads to back-drive the propeller, which could result in overspeed of the propeller and power turbine of the engine. (''Beta'' is the range of propeller operation intended for use during taxi, ground idle, or reverse operations, as controlled by the power lever settings aft of the flight idle stop.) Within the beta range, the propeller blade angle is proportional to the power lever position, and the propeller power control unit (PCU) is not controlling blade pitch or providing propeller overspeed protection.

Saab has issued Service Bulletin 340–76–032, Revision 01, dated September 25, 1995, which describes procedures for installation of an automatic flight idle stop on the control quadrant in the flight compartment. The installation involves removing the mechanical beta stop (if installed), removing the old control quadrant, installing a new/modified control quadrant, and accomplishing a functional test of the flight idle stop system. Accomplishment of this installation will prevent the power levers from being moved aft of the flight idle position during flight.

The service bulletin specifies that certain additional actions are necessary as part of installing an automatic flight idle stop. These additional actions may be accomplished prior to, or in conjunction with, the accomplishment of Saab Service Bulletin 340–76–032. The actions are described in the following Saab service bulletins:

- Service Bulletin 340–76–031, Revision 02, dated September 25, 1995, which describes procedures for modification of the electrical system of the flight idle stop. The modification entails installing new relays and a

console in certain electrical centers, installing indicator lamps in the center instrument panel, and routing of all necessary wiring for these functions.

• Service Bulletin 340–32–100, Revision 01, dated September 25, 1995, which describes procedures for installing a control unit with a wheel spin-up signal. The installation involves removing the currently installed anti-skid control unit and installing new/modified anti-skid control unit having a new part number.

The LFV classified these service bulletins as mandatory and issued Swedish airworthiness directive 1–070, dated April 10, 1995, in order to assure the continued airworthiness of these airplanes in Sweden.

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

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require installation of an automatic flight idle stop on the control quadrant in the flight compartment. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Operators should note that, although the Swedish AD requires accomplishing the installation within 20 months (after the effective date of the Swedish AD), this proposed AD would require accomplishing the installation within 12 months. In developing an appropriate compliance time for this proposed AD, the FAA considered not only the LFV's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, parts availability, and the time necessary to perform the installation. In light of all of these factors, the FAA finds 12 months to be an appropriate compliance time for initiating the proposed action in that it represents the maximum interval of time allowable for affected airplanes to continue to operate without compromising safety.

The FAA estimates that 224 airplanes of U.S. registry would be affected by this proposed AD, that it would take between 122 and 142 work hours per airplane to accomplish the proposed actions, depending upon the configuration of the airplane. The average labor rate is $60 per work hour. Required parts would cost approximately $9,300 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $3,722,880 and $3,991,680 (between $16,620 and $17,820 per airplane).

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this proposed AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this proposed AD, makes a finding of an unsafe condition, this means that the original cost-beneficial level of safety is no longer being achieved and that the proposed actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this proposed AD would be redundant and unnecessary.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ''ADDRESSES.''

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

Saab Aircraft AB: Docket 95–NM–243–AD.

Applicability: Model SAAB SF340A series airplanes, serial numbers -004 through -159 inclusive; and Model SAAB 340B series airplanes, serial numbers -160 through -379 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the movement of both power levers aft of the flight idle stop during flight, which could result in loss of power to both engines, as well as severe engine damage, accomplish the following:

(a) Within 12 months after the effective date of this AD, accomplish the requirements of paragraphs (a)(1), (a)(2), and (a)(3) of this AD.

(1) Modify the electrical system of the flight idle stop in accordance with Saab Service Bulletin 340–76–031, Revision 02, dated September 25, 1995; and

(2) Install a control unit with a wheel spin-up signal in accordance with Saab Service Bulletin 340–32–100, Revision 01, dated September 25, 1995; and

(3) Install an automatic flight idle stop on the control quadrant in the flight compartment in accordance with Saab Service Bulletin 340–76–032, Revision 01, dated September 25, 1995.

Note 2: The actions specified in paragraphs (a)(1) and (a)(2) of this AD may be accomplished prior to, or in conjunction with, the accomplishment of the requirement of paragraph (a)(3) of this AD.

Note 3: Paragraph 2.A. of the Accomplishment Instructions of Saab Service Bulletin 340–76–032, Revision 01, dated September 25, 1995, specifies procedures for removal of a mechanical beta stop mechanism from the airplane. Since installation of a mechanical beta stop mechanism was not required previously by AD, that mechanism may not have been installed on certain airplanes affected by this AD. In such cases, procedures for removal of the mechanical beta stop would not apply.

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished. Issued in Renton, Washington, on March 15, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–6809 Filed 3–20–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 95–NM–203–AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 767 series airplanes. This proposal would require repetitive operational tests to verify proper deployment of the ram air turbine (RAT), and replacement of the rotary actuator motor with a new or serviceable rotary actuator motor, if necessary. This proposal is prompted by reports of corroded rotary actuator motors of the RAT found on in-service airplanes. The actions specified by the proposed AD are intended to prevent such corrosion, which could result in failure of the RAT to deploy and subsequent loss of emergency hydraulic power to the flight controls in the event that power is lost in both engines.

DATES: Comments must be received by May 14, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–203–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Sheila Kirkwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2675; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–203–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–203–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received several reports of corroded rotary actuator motors of the ram air turbine (RAT) found on in-service Boeing Model 767 series airplanes during ground testing. In these incidents, the effects of such corrosion prevented deployment of the RAT. Investigation has revealed that the rotary actuator motor of the RAT is not hermetically sealed. The motor is located in the right aft fairing of the airplane where it is susceptible to moisture accumulation when exposed to high cycling or humid conditions; such moisture accumulation can produce or accelerate the identified corrosion conditions. Corrosion of the rotary actuator motors, if not detected and corrected in a timely manner, could result in failure of the RAT to deploy and subsequent loss of emergency hydraulic power to the flight controls in the event that power is lost in both engines.

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–29A0080, dated October 12, 1995, which describes procedures for repetitive operational tests to verify

proper deployment of the ram air turbine (RAT) system, and replacement of the rotary actuator motor with a new or serviceable rotary actuator motor, if necessary. The alert service bulletin recommends that the repetitive operational tests be accomplished at intervals not to exceed 3,000 flight hours.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require repetitive operational tests to verify proper deployment of the ram air turbine (RAT) system, and replacement of the rotary actuator motor with a new or serviceable rotary actuator motor, if necessary. The actions would be required to be accomplished in accordance with the alert service bulletin described previously.

Operators should note that, although the alert service bulletin recommends a repetitive interval of 3,000 flight hours for the operational tests, the proposed AD would require that the operational tests be accomplished at intervals not to exceed 1,000 flight hours. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the susceptibility of the rotary actuator motor to moisture accumulation when exposed to high cycling or humid conditions, which could lead corrosion of the rotary actuator motor. In consideration of these items, the FAA finds that operational tests conducted at intervals of 1,000 flight hours will better ensure that any detrimental effects associated with corrosion will be identified and corrected prior to the time that they could adversely affect the actuator motor.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

There are approximately 583 Boeing Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 197 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $11,820, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

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

Boeing: Docket 95–NM–203–AD.

Applicability: All Model 767 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent corrosion of the rotary actuator motors, which could result in failure of the RAT to deploy and subsequent loss of emergency hydraulic power to the flight controls in the event that power is lost in both engines, accomplish the following:

(a) Within 6 months after the effective date of this AD, perform an operational test to verify proper deployment of the ram air turbine (RAT) in accordance with Boeing Alert Service Bulletin 767–29A0080, dated October 12, 1995.

(1) If the RAT deploys properly, repeat the operational test thereafter at intervals not to exceed 1,000 flight hours.

(2) If the RAT deploys improperly, prior to further flight, replace the rotary actuator motor with a new or serviceable rotary actuator motor, in accordance with the service bulletin. Repeat the operational test thereafter at intervals not to exceed 1,000 flight hours.

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

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

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

Issued in Renton, Washington, on March 15, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–6808 Filed 3–20–96; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1304

[DEA Number 139P]

RIN Number 1117–AA33

Consolidation, Elimination, and Clarification of Various Regulations; Correction

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Proposed Rule; Correction.

SUMMARY: This document contains a correction to the Notice of Proposed Rulemaking (DEA Number 139P) which was published on March 5, 1996 (61 FR 8503). The proposed rule related to regulatory reinvention initiatives under the President's National Performance Review (NPR).

DATES: Written comments or objections must be received by July 3, 1996.

ADDRESSES: Comments and objections should be submitted in quintuplicate to the Deputy Administrator, Drug Enforcement Administration, Washington, D.C. 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT:

G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION: The proposed rule that is the subject of this correction is intended to consolidate, eliminate, and clarify many of DEA's regulations designed to detect and deter the diversion of controlled substances and chemicals. The proposed change to Section 1304.11(c), as published, retained the current regulatory language rather than the new amended language. The new rule will provide more flexibility for registrants by allowing them to conduct biennial inventories on any date within two years of the initial inventory or previous biennial inventory.

Accordingly, the publication on March 5, 1996, of the proposed regulations under NPR, which were the subject of FR Doc. 96–4663, is corrected as follows:

§ 1304.11 [Corrected]

On page 5824, in the first column, in Section 1304.11, paragraph (c), the words ''The biennial inventory may be taken on the day of the year on which the initial inventory was taken or on any other fixed date which does not vary by more than 6 months from the biennial date that would otherwise apply. If the registrant elects to take the biennial inventory on another fixed date, he/she shall notify the Administration of this election and of the date on which the biennial inventory will be taken'' is corrected to read ''The biennial inventory may be taken on any date which is within two years of the previous biennial inventory date.''

Dated: March 13, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Drug Enforcement Administration.

[FR Doc. 96–6606 Filed 3–20–96; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 31

[IA–03–94]
RIN 1545–AS79

Federal Tax Deposits by Electronic Funds Transfer

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the Federal Register, the IRS is issuing temporary regulations relating to the deposit of Federal taxes by electronic funds transfer under section 6302 of the Internal Revenue Code. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments and outlines of topics to be discussed at the public hearing scheduled for July 16, 1996, beginning at 10 a.m., must be received by June 19, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (IA–03–94), 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 (IA–03–94), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. The public hearing will be held in the Commissioner's Conference Room, room 3313, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Vincent G. Surabian, 202–622–6232 (not a toll-free number). Concerning submissions and the public hearing, Michael Slaughter, 202–622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations published in the Rules and Regulations section of this issue of the Federal Register contain amendments to the Regulations on Employment Taxes and Collection of Income Tax at Source (26 CFR part 31) and an addition to the Income Tax Regulations (26 CFR part 1). These amendments relate to the deposit of Federal taxes by electronic funds transfer. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains these proposed regulations.

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 rules and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of 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 timely submitted to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for July 16, 1996, beginning at 10 a.m. in the Commissioner's Conference Room, room 3313, Internal Revenue Building. 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 who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by June 19, 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 Vincent G. Surabian, Office of the Assistant Chief Counsel (Income Tax & Accounting), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

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

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 31 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding the following entry to read as follows:

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

Section 1.6302–4 also issued under 26 U.S.C. 6302(a) and (c). * * *

Par. 2. Section 1.6302–4 is added to read as follows:

§ 1.6302–4 Use of financial institutions in connection with individual income taxes.

[The text of this proposed section is the same as the text of § 1.6302–4T published elsewhere in this issue of the Federal Register].

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

Par. 3. The authority citation for part 31 continues to read in part as follows:

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

Par. 4. Proposed § 31.6302–1(h), published July 11, 1994 (59 FR 35418), by cross-referencing temporary regulations published the same day (59 FR 35414) is amended as follows:

1. Paragraph (h)(1)(ii)(A) is redesignated as paragraph (h)(1)(ii)(A)(*1*); the first sentence in the paragraph is removed, and three new sentences are added in its place; and, in the last sentence of the newly designated paragraph, the text preceding the table is revised.

2. Paragraph (h)(1)(ii)(A)(*2*) is added.

3. Paragraphs (h)(2), (h)(3), (h)(7) and (h)(8) are revised.

The revised and added provisions read as follows:

§ 31.6302–1 Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992.

[The text of paragraphs (h)(1)(ii)(A)(*1*), (h)(1)(ii)(A)(*2*), (h)(2), (h)(3), (h)(7) and (h)(8) is the same as the text of those paragraphs in § 31.6302–1T published elsewhere in this issue of the Federal Register.]

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 96–6719 Filed 3–20–96; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL140–1–7283b; IL141–1–7284b; FRL–5441–6]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) proposes to approve Illinois' November 14, 1995 request to incorporate an exemption for acetone from the definitions of Organic Material and Organic Materials, Petroleum Liquid, and Volatile Organic Matter (VOM) or Volatile Organic Compounds (VOC) contained in the Illinois State Implementation Plan (SIP) and thereby from regulation as an ozone precursor. The USEPA also proposes to approve Illinois' November 15, 1995 request to revise the definition of VOM or VOC contained in the Illinois SIP to incorporate an exemption for parachlorobenzotrifluoride and cyclic, branched or linear completely-methylated siloxanes from the definition of VOM or VOC and thereby, from regulation as ozone precursors. These requested SIP revisions were made in response to and consistent with USEPA's action to add these chemical compounds to the list of chemicals that are exempted from the definition of VOC. In the final rules section of this Federal Register, the USEPA is approving these actions as a direct final rule without prior proposal because USEPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. USEPA will not institute a second comment period on this action. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received on or before April 22, 1996.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and USEPA's analysis of it are available for inspection at: Regulation Development Section, Air Programs Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6036.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this Federal Register.

Dated: March 1, 1996.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 96–6604 Filed 3–20–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[IN66–1–7289b; FRL–5439–7]

Approval and Promulgation of State Implementation Plan; Indiana; Clean Fuel Fleet Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (USEPA) is proposing to approve a revision to the Indiana State Implementation Plan (SIP) for the purpose of establishing a Clean-Fuel Fleet Program. Indiana submitted the SIP revision request on December 20, 1995, and February 14, 1996, to satisfy a federal mandate, found in the Clean Air Act, requiring certain states to establish Clean-Fuel Fleet Programs.

This revision establishes and requires the implementation of an Clean-Fuel Fleet Program in Lake and Porter Counties ozone nonattainment area. In the final rules section of this Federal Register, the USEPA is approving this action as a direct final rule without prior proposal because USEPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received on or before April 22, 1996.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and USEPA's analysis of it are available for inspection at: Air Programs Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6082.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this Federal Register.

Dated: February 29, 1996.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 96–6598 Filed 3–20–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MA–19–1-b; A–1–FRL–5436–4]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Emission Statements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve Massachusetts' revised 310 CMR 7.12, ''Inspection Certificate, Record Keeping and Reporting'' and incorporating it into Massachusetts' SIP. EPA received revisions to the Massachusetts SIP revising 310 CMR 7.12 on three separate occasions however, EPA is addressing all three submissions in this action. These revisions streamline and clarify the permitting process and address the Clean Air Act's emission statement program requirement. In the Final Rules Section of this Federal Register, EPA is approving the State's SIP revisions as a direct final rule without prior proposal because the Agency views them as noncontroversial revision amendments and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this proposal.

Any parties interested in commenting on this proposal should do so at this time.

DATES: Comments must be received on or before April 22, 1996.

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

FOR FURTHER INFORMATION CONTACT: David Conroy, (617) 565–3254.

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

Authority: 42 U.S.C. 7401–7671q.

Dated: September 18, 1995.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 96–6782 Filed 3–20–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5443–4]

40 CFR Part 300

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete the New Castle Spill Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) Region 3 announces its intent to delete the New Castle Spill Site (Site) from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). EPA promulgated the NCP pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the Delaware Department of Natural Resources and Environmental Control (DNREC) have determined that all appropriate CERCLA actions have been implemented and that the Site poses no significant threat to public health, welfare, or the environment. Therefore, further remedial measures pursuant to CERCLA are not needed.

DATES: Comments concerning the proposed deletion of the Site from the NPL may be submitted on or before April 22, 1996.

ADDRESSES: Comments may be submitted to Stephanie Dehnhard (3HW23), Remedial Project Manager, U.S. Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107, (215) 597–3167.

Comprehensive information on this Site is available for viewing at the Site information repositories at the following locations:

U.S. EPA, Region 3, Hazardous Waste Technical Information Center, 841 Chestnut Building, Philadelphia, PA, (215) 597–6633. Delaware Department of Natural Resources and Environmental Control, 715 Grantham Lane, New Castle, DE, (302) 323–4540.

FOR FURTHER INFORMATION CONTACT: Stephanie Dehnhard (3HW23), U.S. EPA Region 3, 841 Chestnut Building, Philadelphia, PA, 19107, (215) 597–3167.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures

IV. Basis For Intended Site Deletion

I. Introduction

The Environmental Protection Agency (EPA) Region 3 announces its intent to delete the New Castle Spill Site, New Castle, Delaware, from the National Priorities List (NPL), Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, and requests comments on this decision. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL has the list of those sites. As described in Section 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions in the unlikely event that conditions at a site warrant such action in the future.

EPA will accept comments on the proposal to delete this Site from the NPL for thirty calendar days after publication of this notice in the Federal Register.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the New Castle Spill Site and explains how the Site meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that sites may be deleted from, or recategorized on the NPL where no further response is appropriate. In making a determination to delete a site from the NPL, EPA considers, in consultation with the state, whether any of the following criteria has been met:

(i) Responsible parties or other parties have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Sites may not be deleted from the NPL until the state in which the site is located has concurred on the proposed deletion. EPA is required to provide the state with 30 working days for review of the deletion notice prior to its publication in the Federal Register.

Pursuant to the NCP, 40 CFR 300.425(e)(3), all sites deleted from the NPL are eligible for further Fund-financed remedial actions should future conditions warrant such action. When there is a significant release from a site deleted from the NPL, the site can be restored to the NPL without application of the Hazard Ranking System.

III. Deletion Procedures

Section 300.425(e)(4) of the NCP sets forth requirements for site deletions to assure public involvement in the decision. During the proposal to delete a site from the NPL, EPA is required to conduct the following activities:

(i) Publish a notice of intent to delete in the Federal Register and solicit comment through a public comment period of a minimum of 30 calendar days;

(ii) Publish a notice of availability of the notice of intent to delete in a major local newspaper of general circulation at or near the site that is proposed for deletion;

(iii) Place copies of information supporting the proposed deletion in the information repository at or near the site proposed for deletion; and,

(iv) Respond to each significant comment and any significant new data submitted during the comment period in a Responsiveness Summary.

If appropriate, after consideration of comments received during the public comment period, EPA then publishes a notice of deletion in the Federal Register and places the final deletion package, including the responsiveness summary, in the Site repositories.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. As stated in Section II of this Notice, § 300.425(e)(3) of the NCP provides that the deletion of a site from the NPL does not preclude eligibility for future response actions.

IV. Basis for Intended Site Deletion

The following site summary provides EPA's rationale for the proposal to delete the New Castle Spill Site from the NPL.

The Site is a former manufacturing plant of the Witco Corporation (Witco) located 0.5 miles west of the Delaware River and 0.5 miles north of the City of New Castle, Delaware. Surrounding the Site is a mixed commercial and residential area. The Site is bordered on the west by a marsh and on the east by a dual highway.

Among the chemicals Witco used in the production of plastic foams was the semi-volatile organic compound tris(2-chloropropyl) phosphate (Tris). Sometime before 1977 it is estimated that approximately 4–5 drums of Tris, stored on the Site, were spilled on the ground contaminating the soil and shallow ground water beneath. Under the direction of DNREC, the ground water was pumped and discharged into the adjacent marsh. Numerous investigations of the soil and ground water followed, including an EPA Site Inspection in 1981. EPA proposed the Site for inclusion on the NPL on December 30, 1982 and finalized the listing on the NPL on September 8, 1983.

Pursuant to an Administrative Order on Consent with DNREC, Witco conducted a remedial investigation (RI) and feasibility study (FS) from February 1988 to June 1989. These studies determined the extent of contamination, the risks to human health and the environment posed by the contamination, and cleanup alternatives to address those risks. The RI included sampling of soils, ground water, surface water, and marsh sediments.

Results of the RI showed that the ground water in the shallow Columbia aquifer was contaminated with the organic compounds Tris, trichloroethylene (TCE), and 1,2-dichlorethene. Only Tris was determined to be present at levels that presented a significant risk to human health. TCE was determined to be from another source upgradient of the Site and was addressed through a separate State action. No Tris contamination was found in the deeper Potomac aquifer. Tris and several other organic compounds were found in soil samples but at levels that would not threaten human health or the environment and were no longer considered a source of contamination to the ground water. Contaminant levels found in the marsh area were well below levels that would threaten the wetland habitat or environmental receptors.

Using the RI data, an endangerment assessment was performed to evaluate the risks that contaminants detected at the Site posed to human health and the environment. Of the numerous exposure pathways evaluated, only potential future exposure to ground water used as a potable water supply was determined to present a risk to human health that exceeded acceptable levels as defined by the NCP. As no one was using the Columbia aquifer in the area for a potable water supply, natural attenuation was determined to be the most appropriate means by which to reduce the Tris concentrations to acceptable levels. EPA developed a health-based drinking water cleanup level of 4.4 mg/l for Tris and estimated that it would take approximately four years for Tris to reach this level by natural attenuation.

To document this cleanup approach, EPA and DNREC issued a Record of Decision (ROD) on September 28, 1989 which included the following

components: (1) Monitoring of the Columbia aquifer on a quarterly basis for Tris to ensure the effectiveness of the natural attenuation process; (2) monitoring of the Potomac aquifer on an annual basis for Tris to ensure that contamination has not migrated from the Columbia aquifer; (3) monitoring of the surface water and sediments of the adjacent wetlands on an annual basis for Tris, with further evaluation and bioassay testing required if trigger values of 100 ug/l Tris in surface water, or 1000 ug/kg Tris in sediments were reached; (4) institutional restrictions on the placement of wells in the Columbia aquifer in the vicinity of the Site; and, (5) a five year effectiveness review of the remedy.

Public participation was encouraged in the remedy selection process. Prior to issuing the ROD, EPA and DNREC had released a proposed plan outlining the cleanup alternatives developed in the feasibility study and the preferred remedy. A public comment period followed the proposed plan's release from August 22, 1989 to September 22, 1989. A public meeting was held on September 6, 1989 to discuss the proposed plan. All public comments were addressed and documented in the responsiveness summary which is part of the ROD.

In April 1991, EPA and Witco entered into a Consent Decree whereby Witco agreed to implement the remedy selected in the ROD. Witco began quarterly ground water, surface water, and sediment monitoring in July 1992 which continued through September 1995. Tris levels in the surface water and sediment samples were consistently well below the trigger levels specified in the ROD or not detected at all; therefore, no further evaluation or bioassay testing was necessary in the marsh. Tris was not detected in the Potomac aquifer in any sampling event.

Of the 13 monitoring wells screened in the Columbia aquifer that were included in the monitoring program, only two wells showed concentrations of Tris above the ground water cleanup level of 4.4 mg/l during the entire monitoring period. By natural attenuation, Tris concentrations decreased with time in these two wells until they were below the cleanup level for the last several sampling events. During the last sampling event in September 1995, Tris concentrations ranged from approximately 1 to 2 mg/l. A statistical analysis of the data confirmed that there is very little chance that the Tris concentration will exceed the cleanup level in the future.

In November 1990, pursuant to the ROD, DNREC instituted a Ground Water Management Zone (GMZ) in the vicinity of the Site to restrict installation of drinking water wells in the area. Now that the Tris cleanup level has been achieved in the area of the Site and there is no longer a need to prevent exposure to the ground water, DNREC will retract the GMZ following the deletion of the Site from the NPL.

Based on the information presented above, EPA has determined that Witco, the responsible party for this Site, has implemented all response actions required and that no further action is appropriate. Thus, the required NPL deletion criteria presented in Section II, above, have been met. DNREC has concurred on this determination. Correspondence documenting this concurrence is included in the supporting documentation.

The ROD stated that EPA would conduct a five-year effectiveness review to reevaluate the Site. The evaluation made to determine if the NPL Deletion criteria have been met serves as that review. In addition, EPA reviewed the most recent toxicological information available for Tris and determined that the cleanup level of 4.4 mg/l in ground water remains protective. Therefore, EPA has determined that the Site poses no significant threat to public health or the environment.

The NCP at 40 CFR 300.430 states that EPA shall review remedial actions every five years if hazardous substances, pollutants, or contaminants remain at the site above levels that allow unrestricted exposure and unlimited use. Since neither of these conditions exists at this Site, further five-year reviews are not warranted and will not be conducted.

EPA, with the concurrence of DNREC, believes that the criteria for deletion of the Site have been met. Therefore, EPA is proposing deletion of the Site from the NPL. Documents supporting this action are available in the site repositories of information.

Dated: March 8, 1996.

Alvin R. Morris,

Acting Regional Administrator, U.S. EPA Region 3.

[FR Doc. 96–6561 Filed 3–20–96; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 61, No. 56
Thursday, March 21, 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

Foreign Agricultural Service

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Foreign Agricultural Service's (FAS) intention to request an extension for a currently approved information collection that aids in analyzing existing information products to better meet reader needs.

DATES: Comments on this notice must be received by May 20, 1996 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Sally Klusaritz, Deputy Director, Information Division, Foreign Agricultural Service, U.S. Department of Agriculture, 14th and Independence Avenue, S.W., Washington, DC 20250–1004, (202) 720–3448.

SUPPLEMENTARY INFORMATION:

Title: FAS/Readership Survey.

OMB Number: 0551–0022.

Expiration Date of Approval: August 31, 1996.

Type of Request: Extension of a currently approved information collection.

Abstract: The delivery of information on foreign supply and demand for agricultural products is one of the primary missions of the Foreign Agricultural Service (FAS). In order for this mission to be done effectively and in a cost-efficient manner, FAS requires a good understanding of the various audiences for FAS materials, their needs for various types of information, and the use they make of this information. The FAS Readership Survey will have an impact on the type of information delivery system FAS uses.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 10 minutes per response.

Respondents: U.S. subscribers to FAS periodicals.

Estimated Number of Respondents: 800.

Estimated Number of Responses per Respondent: 16.

Estimated Total Annual Burden on Respondents: 134 hours.

Copies of this information collection can be obtained without charge from Pamela Hopkins, the Agency Information Collection Coordinator, at (202) 720–6713.

Request for Comments: Send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to: Sally Klusaritz, Deputy Director, Information Division, Foreign Agricultural Service, U.S. Department of Agriculture, 14th and Independence Ave., SW., AG BOX 1004, Washington, DC 20250–1004.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, D.C., March 14, 1996.

August Schumacher, Jr.,

Administrator, Foreign Agricultural Service.

[FR Doc. 96–6835 Filed 3–20–96; 8:45 am]

BILLING CODE 3410–10–M

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for Intermountain Region, Utah, Idaho, Nevada, and Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all ranger districts, forests, and the Regional Office of the Intermountain Region to publish legal notice of all decisions subject to appeal under 36 CFR 215 and 36 CFR 217. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices of decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after March 1, 1996. The list of newspapers will remain in effect until October 1996 when another notice will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: K. Dale Torgerson, Regional Appeals Manager, Intermountain Region, 324 25th Street, Ogden, UT 84401, phone (801) 625–5274.

SUPPLEMENTARY INFORMATION: The administrative appeal procedures 36 CFR 215 and 36 CFR 217, of the Forest Service require publication of legal notice in a newspaper of general circulation of all decisions subject to appeal. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested and affected by a specific decision.

The legal notice is to identify: the decision by title and subject matter; the date of the decision; the name and title of the official making the decision; and how to obtain copies of the decision. In addition, the notice is to state the date the appeal period begins which is the day following publication of the notice.

The timeframe for appeal shall be based on the date of publication of the notice in the first (principal) newspaper listed for each unit.

The newspapers to be used are as follows:

Regional Forester, Intermountain Region

For decisions made by the Regional Forester affecting National Forests in Idaho:

The Idaho Statesman, Boise, Idaho

For decisions made by the Regional Forester affecting National Forests in Nevada:

The Reno Gazette-Journal, Reno, Nevada

For decisions made by the Regional Forester affecting National Forests in Wyoming:

Casper Star-Tribune, Casper,

Wyoming
For decisions made by the Regional Forester affecting National Forests in Utah:
Standard-Examiner, Ogden, Utah
If the decision made by the Regional Forester affects all National Forests in the Intermountain Region, it will appear in:
Standard-Examiner, Ogden, Utah

Ashley National Forest

Ashley Forest Supervisors decisions:
Vernal Express, Vernal, Utah
Vernal District Ranger decisions:
Vernal Express, Vernal, Utah
Flaming Gorge District Ranger for decisions affecting Wyoming:
Casper Star Tribune, Casper, Wyoming
Flaming Gorge District Ranger for decisions affecting Utah:
Vernal Express, Vernal, Utah
Roosevelt and Duchesne District Ranger decisions:
Uintah Basin Standard, Roosevelt, Utah

Boise National Forest

Boise Forest Supervisor decisions:
The Idaho Statesman, Boise, Idaho
Mountain Home District Ranger decisions:
The Idaho Statesman, Boise, Idaho
Boise District Ranger decisions:
The Idaho Statesman, Boise, Idaho
Idaho City District Ranger decisions:
The Idaho Statesman, Boise, Idaho
Cascade District Ranger decisions:
The Advocate, Cascade, Idaho
Lowman District Ranger decisions:
The Idaho City World, Idaho City, Idaho
Emmett District Ranger decisions:
The Messenger-Index, Emmett, Idaho

Bridger-Teton National Forest

Bridger-Teton Forest Supervisor decisions:
Casper Star-Tribune, Casper, Wyoming
Jackson District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming
Buffalo District Ranger decisions:
Casper Star-Tribune, Jackson, Wyoming
Big Piney District Ranger decisions:
Casper Star-Tribune, Jackson, Wyoming
Pinedale District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming
Greys River District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming
Kemmerer District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming

Caribou National Forest

Caribou Forest Supervisor decisions:
Idaho State Journal, Pocatello, Idaho
Soda Springs District Ranger decisions:
Idaho State Journal, Pocatello, Idaho
Montpelier District Ranger decisions:
Idaho State Journal, Pocatello, Idaho
Malad District Ranger decisions:
Idaho State Journal, Pocatello, Idaho
Pocatello District Ranger decisions:
Idaho State Journal, Pocatello, Idaho

Dixie National Forest

Dixie Forest Supervisor decisions:
The Daily Spectrum, St. George, Utah
Pine Valley District Ranger decisions:
The Daily Spectrum, St. George, Utah
Cedar City District Ranger decisions:
The Daily Spectrum, St. George, Utah
Powell District Ranger decisions:
The Daily Spectrum, St. George, Utah
Escalante District Ranger decisions:
The Daily Spectrum, St. George, Utah
Teasdale District Ranger decisions:
The Daily Spectrum, St. George, Utah

Fishlake National Forest

Fishlake Forest Supervisor decisions:
Richfield Reaper, Richfield, Utah
Loa District Ranger decisions:
Richfield Reaper, Richfield, Utah
Richfield District Ranger decisions:
Richfield Reaper, Richfield, Utah
Beaver District Ranger decisions:
Richfield Reaper, Beaver, Utah
Fillmore District Ranger decisions:
Richfield Reaper, Fillmore, Utah

Humboldt-Toiyabe National Forests

Humboldt Forest Supervisor decisions:
Elko Daily Free Press, Elko, Nevada
Toiyabe Forest Supervisor decisions:
Reno Gazette-Journal, Reno, Nevada
Sierra Ecosystem Coordination Center (SECO):
Carson District Ranger decisions:
Reno Gazette-Journal, Reno, Nevada
Bridgeport District Ranger decisions:
The Review-Herald, Mammoth Lakes, California
Spring Mountain National Recreation Area Ecosystem (SMNRAE):
Spring Mountain National Recreation Area District Ranger decisions:
Las Vegas Review Journal, Las Vegas, Nevada
Central Nevada Ecosystem (CNECO):
Austin District Ranger decisions:
Reno Gazette-Journal, Reno, Nevada
Tonopah District Ranger decisions:
Tonopah Times Bonanza-Goldfield News, Tonopah, Nevada
Ely District Ranger decisions:
Ely Daily Times, Ely, Nevada
Northeast Nevada Ecosystem (NNECO):
Mountain City District Ranger decisions:
Elko Daily Free Press, Elko, Nevada
Ruby Mountains District Ranger decisions:
Elko Daily Free Press, Elko, Nevada
Jarbidge District Ranger decisions:
Elko Daily Free Press, Elko, Nevada
Santa Rosa District Ranger decisions:
Humboldt Sun, Winnemucca, Nevada

Manti-Lasal National Forest

Manti-Lasal Forest Supervisor decisions:
Sun Advocate, Price, Utah
Sanpete District Ranger decisions:
The Pyramid, Mt. Pleasant, Utah
Ferron District Ranger decisions:
Emery County Progress, Castle Dale, Utah
Price District Ranger decisions:
Sun Advocate, Price, Utah
Moab District Ranger decisions:
The Times Independent, Moab, Utah
Monticello District Ranger decisions:
The San Juan Record, Monticello, Utah

Payette National Forest

Payette Forest Supervisor decisions:
Idaho Stateman, Boise, Idaho
Weiser District Ranger decisions:
Signal American, Weiser, Idaho
Council District Ranger decisions:
Council Record, Council, Idaho
New Meadows, McCall, and Krassel District Ranger decisions:
Star News, McCall, Idaho

Salmon and Challis National Forests

Salmon Forest Supervisor decisions:
The Recorder-Herald, Salmon, Idaho
Cobalt District Ranger decisions:
The Recorder Herald, Salmon, Idaho
North Fork District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
Leadore District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
Salmon District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
Challis Forest Supervisor decisions:
The Challis Messenger, Challis, Idaho
Middle Fork District Ranger decisions:
The Challis Messenger, Challis, Idaho
Challis District Ranger decisions:
The Challis Messenger, Challis, Idaho
Yankee Fork District Ranger decisions:
The Challis Messenger, Challis, Idaho
Lost River District Ranger decisions:
The Challis Messenger, Challis, Idaho

Sawtooth National Forest

Sawtooth Forest Supervisor decisions:
The Times News, Twin Falls, Idaho
Burley District Ranger decisions:
Ogden Standard Examiner, Ogden, Utah, for those decisions on the Burley District involving the Raft River Unit.
South Idaho Press, Burley, Idaho for decisions issued on the Idaho portions of the Burley District.
Twin Falls District Ranger decisions:
The Times News, Twin Falls, Idaho

Ketchum District Ranger decisions:
Wood River Journal, Hailey, Idaho
Sawtooth National Recreation Area:
Challis Messenger, Challis, Idaho
Fairfield District Ranger decisions:
The Times News, Twin Falls, Idaho

Targhee National Forest

Targhee Forest Supervisor decisions:
The Post Register, Idaho Falls, Idaho
Dubois District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Island Park District Ranger decisions:
The Post Register, Idaho Falls,Idaho
Ashton District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Palisades District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Teton Basin District Ranger decisions:
The Post Register, Idaho Falls, Idaho

Uinta National Forest

Uinta Forest Supervisor decisions:
The Daily Herald, Provo, Utah
Pleasant Grove District Ranger decisions:
The Daily Herald, Provo, Utah
Heber District Ranger decisions:
The Daily Herald, Provo, Utah, and *Wasatch Wave,* Heber City, Utah
Spanish Fork District Ranger decisions:
The Daily Herald, Provo, Utah

Wasatch-Cache National Forest

Wasatch-Cache Forest Supervisor decisions:
Salt Lake Tribune, Salt Lake City, Utah
Salt Lake District Ranger decisions:
Salt Lake Tribune, Salt Lake City, Utah
Kamas District Ranger decisions:
Salt Lake Tribune, Salt Lake City, Utah
Evanston District Ranger decisions:
Uintah County Herald, Evanston, Wyoming
Mountain View District Ranger decisions:
Uintah County Herald, Evanston, Wyoming
Ogden District Ranger decisions:
Ogden Standard Examiner, Ogden, Utah
Logan District Ranger decisions:
Logan Herald Journal, Logan, Utah

Dated: March 5, 1996.

Robert M. Swinford,

Acting Deputy Regional Forester.

[FR Doc. 96–6743 Filed 3–20–96; 8:45 am]

BILLING CODE 3410–11–M

Oil and Gas Leasing; Custer National Forest, Sioux Ranger District; Harding County, SD

AGENCIES: Forest Service, USDA; Bureau of Land Management, USDI.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The USDA, Forest Service, and the USDI, Bureau of Land Management (BLM) will prepare an Environmental Impact Statement (EIS) to disclose the environmental effects of oil and gas leasing and reasonable foreseeable actions resulting from subsequent exploration and development, as well as interconnected actions, on the portion of the Sioux Ranger District in South Dakota. The Forest Service and BLM are joint lead agencies for the preparation of this document (40 CFR 1501.5).

The Custer National Forest and Resources Management Plan (Forest Plan) and Record of Decision (1987) identified which lands on the Forest are available for oil and gas leasing. This EIS, consistent with the Federal Onshore Oil and Gas Reform Act of 1987, will reaffirm the administratively available decision, identify specific lands the BLM would be authorized to lease, and develop site-specific lease stipulations designed to reduce impacts to surface resource values. This analysis will evaluate reasonable foreseeable impacts of post-leasing activity. The analysis will tier to the Forest Plan Environmental Impact Statement.

DATES: Comments concerning the scope of the analysis should be received in writing by April 22, 1996.

ADDRESSES: Send written comments to Nancy Curriden, Forest Supervisor, Custer National Forest, P.O. Box 2556, Billings, Montana 59103.

FOR FURTHER INFORMATION CONTACT: Mark Slacks, EIS Team Leader, Custer National Forest, 406–657–6361 or 701–842–2393.

SUPPLEMENTARY INFORMATION: This analysis will address oil and gas leasing and the site-specific application of lease stipulations for Federal minerals within National Forest System (NFS) lands located in Harding County, South Dakota. Included are all Federal minerals within National Forest boundaries of the North and South Cave Hills, Slim Buttes, and East and West Short Pine Hills. The project area encompasses approximately 77,330 acres, 9,575 acres of which are currently leased for oil and gas development.

This EIS will address the environmental effects of leasing in the various management areas defined in the Forest Plan. The scope of the EIS will be confined to those issues associated with oil and gas leasing and subsequent activities and will not address land allocations made in the Forest Plan.

The Custer Forest Plan identifies Forest-wide and management area multiple use goals, objectives and standards. Oil and gas leasing and possible subsequent exploration and development activities and their individual and cumulative effects were considered in the development of Forest-wide goals and objectives, as well as in the development of specific management area direction. The goals for the ten management areas (MAs) within the project area are very briefly summarized here: MA B, provides for the continuation of livestock grazing; MA C, to manage for key wildlife habitat areas; MA D, to maintain or improve long-term diversity and quality of habitat for selected species; MA E, to facilitate exploration, development and production of energy and mineral resources; MA F, to provide a spectrum of recreation opportunities; MA L, to provide opportunities for research, study, and monitoring of natural-occurring ecological processes; MA M, to provide healthy, self-perpetuating riparian plant and water communities; MA N, to provide healthy, self perpetuating woody draw plant communities; MA O, to protect the unique geological and scenic features of National Natural Landmarks; and MA P, to provide adequate facilities for the administration of the Custer National Forest. The Forest Plan identifies lease stipulations to be applied by Management Area (also Appendix V). Briefly and in part, no surface use stipulations are recommended for riparian areas, wetlands, floodplains, slopes exceeding 40%, fragile soils, areas of mass failure hazard, Management Area C, recreation areas, national natural landmarks, and administrative areas. Surface occupancy Restrictions and Limited Surface Use stipulations are used primarily for wildlife, visual and recreation values.

The Forest Supervisor will decide which National Forest System lands are administratively available for oil and gas leasing and with what, if any, stipulations for other surface resource protection. The Forest Supervisor will also decide what specific National Forest system lands the BLM will be authorized to offer for lease, subject to the Forest Service required stipulations.

The BLM State Director will decide whether or not to offer for lease those specific lands authorized by the Forest Service. The State Director will also decide whether or not to lease Federal minerals beneath non-Federal lands (split estate lands) within the project area (there are approximately 165 acres of split estate lands under BLM jurisdiction within the project area).

The Responsible Officials for this EIS and these decisions are Nancy Curriden, Forest Supervisor, and Larry E. Hamilton, BLM State Director.

Additional Resource Information

The project area consists of National Forest System lands within the following Townships and Ranges within Harding County, South Dakota: T 17 N, R 1 E; T 16 N, R(s) 3 & 4 E; T(s) 20, 21, & 22 N, R(s) 4, 5, & 6 E; and T(s) 16, 17, 18, & 19 N, R(s) 7, 8, & 9 E; Black Hills Meridian. As noted previously, this includes the North and South Cave Hills, Slim Buttes, and East and West Short Pine Hills. All National Forest System lands within the project area lie within a 30 mile radius of Buffalo, South Dakota. The following information provides a synopsis of the resources found within the project area.

The project area includes five forested hill or butte areas situated like islands in the extensive grasslands in northwestern South Dakota. These island-like hills or buttes are comprised of sandstone and are geologically younger than the surrounding grasslands. The geology, soils, and topographic relief of the hills and buttes, along with increasing precipitation from the prairie to the tops of the buttes, results in a biologically diverse area.

Geologic Resources

There are a number of caves, paleontological resources, and special geologic features within the project area. In addition to providing an opportunity for scientific study, these geologic features have been used historically and prehistorically, and continue to be used, by Native Americans as well as others. Caves also provide habitat for certain species of vertebrate and invertebrate creatures. Additionally, much of the analysis area is rich in vertebrate and invertebrate fossils.

The Castles National Natural Landmark is a special geologic feature that lies within the project area. This landmark was added to the National Register of Natural Landmarks in 1978, is 1,005 acres in size, and is located in the northern part of the Slim Buttes.

Other special geologic features that may exist within the project area are Cretaceous/Tertiary (K/T) boundary outcrops and geologic type sections. The K/T boundary marks a major extinction even in geologic time. The formations representing this event are exposed in the project area. Some such outcrops have world-class characteristics, literally occurring in only a few places in the world. Geologic type sections are the outcrop areas for a particular rock formation for which the formation was originally described and named.

Heritage Resources

Internationally recognized rock art is located in the North Cave Hills, of which 102 of these sites are currently listed on the National Register of Historic Places. The Cave Hills have been recognized as having the highest site density in the Custer National Forest. The Native American communities continue to use traditional hunting, and plant and mineral gathering areas within the project area. The Cheyenne, Sioux and Assiniboine have expressed concern over the proper treatment of traditional cultural properties and burials located in the project area. The site of the Battle of the Slim Buttes is adjacent to the project area, and is considered sacred to the Lakota Sioux. Ludlow Cave is located in the Cave Hills and is considered one of the most important sites in the State of South Dakota, as well as being considered sacred to the Hidatsa, Crow, Arikara, Cheyenne, Assiniboine, and Sioux.

Hydrologic Resources

The project area is at the divides for tributaries draining into the Little Missouri, Gran, and Moreau Rivers. Streamflows are erratic, with most streams being intermittent in nature. During most of the year surface water is generally lacking. Water quality within the project area has not been measured, but may be better than the surrounding areas because of the sandy soils on the buttes. Ground water supplies in general range from poor to fair in quality.

Recreation and Visual Resources

There are two developed recreation sites (Reva Gap and Picnic Springs), numerous dispersed sites, caves, a proposed Research Natural Area (Deer Draw), and The Castles National Natural Landmark within the project area. In addition, the area is popular for hunting deer, turkey, antelope, and grouse (sage and sharptail).

Each of the five geographic areas (buttes) within the project area stand out like islands from the sea of grass surrounding them. Their striking contrast to the prairie around them results in a unique, high-quality visual experience.

Social and Economic Resources

The communities within and near the project area rely on income from numerous sources, including livestock production, crops farming (primarily wheat, oats, and barley), tourism and recreation, and oil and gas development.

Special Areas—Research Natural Areas/Special Interest Areas

There are two special areas within the project area. The Castles National Natural Landmark is a Special Interest Area and was discussed previously. Deer Draw, located in the Slim Buttes, is a proposed Research Natural Area. Deer Draw features vegetation types which are absent from other designated natural areas within the region. Of primary significance is the presence of an interconnected series of woody draws in good to excellent ecological condition.

Transportation System

The present road network is accessed by County and State roads which pass through or by the isolated areas of National Forest System lands. This road network provides access to nearly every section of land in the project area. Road standards vary from double lane paved roads to unconstructed single lane wheel tracks. Primary uses of State and County roads include farm and ranch use, tourism, oil production activity, National forest access, hunting, and general access or through travel. Primary uses of the National Forest road system includes recreation visits (pleasure driving, hunting, camping, picnicking, etc.), National Forest administration, and other National Forest uses (grazing, oil production, mineral exploration).

Preliminary Issues

Based on comments made by the public on past proposals or actions, the following is a list of preliminary issues to be addressed in this Environmental Impact Statement. This list is subject to verification, and will be confirmed or modified based on the public responses received during this scoping process.

1. Sulfur dioxide and hydrogen sulfide, as well as other noxious gases, are common emissions from oil wells in some areas of the Williston Basin. Also, there would be additional emissions from equipment and vehicles used in oil and gas exploration, development, and production (e.g. drilling rigs and pump jacks powered by internal combustion engines). There is the potential to exceed established air quality standards from noxious gases emitted from oil and gas development, as well as from equipment and vehicle emissions.

2. Oil and gas exploration, development, and production may affect threatened and endangered species or sensitive species. There are concerns that oil and gas exploration, development, production, and rehabilitation could affect habitats,

resulting in a change of plant and wildlife populations.

3. Caves are created by geologic processes and cave features (e.g. ice, stalactites, stalagmites, crystals, etc.) are important from a scientific perspective. Cave features may be vandalized, or possibly destroyed, as a result of increased access into an area, precluding scientific study of cave formation and cave processes. In addition, oil and gas exploration, development, and production may affect cave hydrology, biological resources, heritage resources, air flow, mineral formations, and is a possible source of pollution from spills and accidents. Also, cave-dwelling wildlife, especially bats, could be affected by oil and gas development activities.

4. Much of the analysis area is rich in vertebrate and invertebrate fossils. There are concerns over the possible destruction and loss of these resources. These activities may also create new fossil-bearing exposures that would not otherwise be found.

5. There are special geological features that are present (The Castles National Natural Landmark), and some that may be present (e.g. the Cretaceous/Tertiary (K/T) boundary outcrops, and Geologic Type Sections) within the project area. There are concerns that oil and gas exploration, development, and production activities may damage or adversely affect these resources.

6. The entire project area is permitted for livestock grazing. Access roads and pads for wells and ancillary equipment constructed for oil and gas exploration, development, and production may affect the lands permitted for grazing.

7. There are several concerns regarding Heritage Resources:

a. That recorded and unrecorded sites will not receive adequate protection from oil and gas activities, as well as the potential for atmospheric and visual intrusions.

b. That improved access could result in site vandalism and unauthorized site excavation.

c. Native American communities are concerned that traditional cultural properties, and plant and mineral gathering areas will not receive respectful treatment.

8. Oil and gas development may affect water resources, including associated resources such as wetlands and riparian areas. All water uses, water quality and quantity may be affected by oil and gas exploration, development, production, and rehabilitation. Also, oil, hazardous materials, and other fluid spills from production facilities, trucks, and pipelines may affect surface water quality, as well as other resource values.

9. There is a concern that vehicles and equipment, as well as the construction of drilling pads and roads for oil and gas exploration, development, and production may provide suitable transport and habitat, respectively, for noxious weeds to infest new and larger areas.

10. Oil and gas development activities have the potential to affect recreation values and activities within the project area in several ways. Travel over Forest Development Roads to developed recreation sites, as well as dispersed sites, could be affected during exploration, drilling, and production operations. Use of recreation facilities, the National Forest, a high quality visual experience, scenic driving (the nation's number one recreational activity), hunting, and other recreational activities could be affected by commercial traffic, drilling, and production activities and facilities.

11. Forest Service and Bureau of Land Management surface management policies which may protect some resources at the expense of others may have a net positive or negative effect on the total income to communities. Included with this issue are the effects of Forest Service surface management policies on the economics of oil and gas development and production, resulting in the possible preclusion of drilling due to environmental protection policies.

12. Land ownership within and adjacent to National Forest System lands in the analysis area is a system of intermingled Federal, State, and private lands. Availability of Federal lands for oil and gas leasing affects industry decisions to lease and develop intermingled or adjacent State and private lands.

13. Jurisdiction or ownership on the National Forest road system, within the project area, is generally complete, except for segments of access routes between the Forest boundary and the County road providing access to the area. Because of the commercial aspect of the proposed action, lack of clear rights-of-way may create access difficulties for future, site-specific project decisions.

Preliminary Alternatives

The following have been identified as preliminary alternatives. A reasonable range of alternatives to the proposed action will be developed that meet the underlying purpose and need for the proposal, except the No Action Alternative because it is required under the National Environmental Policy Act. The Environmental Impact Statement will discuss the issues, a reasonable range of alternatives to the proposed action designed to respond to the issues, and the amount of oil and gas development that might occur under each alternative. The alternatives can be adjusted to fit specific concerns, and new alternatives can be developed based on the responses received from the public and other agencies through the scoping process.

Alternative 1—No Action—No leasing at this time.

Alternative 2—Proposed Action—Issue leases with the stipulations identified in the Forest Plan.

Alternative 3—Standard Terms—Issue leases with standard lease terms only, no additional stipulations.

Public participation will be important to the analysis. Part of the goal of public involvement is to identify additional issues and to refine the preliminary issues noted above. People may visit with Forest Service officials at any time during the analysis and prior to the decision. However, two periods are specifically designated for comments on the analysis: (1) During the scoping process, and (2) during the Draft Environmental Impact Statement comment period.

During the scoping process, the Forest Service is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. A scoping document will be mailed to parties known to be interested in the proposed action by March 22, 1996. The agency invites written comments and suggestions on this action, especially regarding identification of issues and alternative development. An open house will be held in Buffalo, South Dakota sometime in April 1996. Notification of the time and place of this open house will be published in local newspapers.

The comment period on the draft environmental impact Statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the Federal Register.

A Draft EIS is scheduled for release to the public for comment in March 1997, and the Final EIS is scheduled for September 1997.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft 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 be raised at the draft environmental impact Statement stage but that are not raised until after completion of the final environmental impact Statement may be waived or dismissed by the courts. *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 are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact Statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. 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.

Dated: March 13, 1996.

Nancy T. Curriden,

Forest Supervisor.

[FR Doc. 96–6775 Filed 3–20–96; 8:45 am]

BILLING CODE 3410–11–M

Tie Camp Project, Medicine Bow/Routt National Forest, Carbon County, Wyoming and Jackson County, Colorado

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement to analyze and disclose the environment effects of a site-specific proposal to harvest timber in the Coon Creek area of the Hayden Ranger District of the Medicine Bow/Routt National Forest within Carbon County, Wyoming and Jackson County, Colorado. The proposal could have impacts on the Coon Creek ''roadless area.'' The National Environmental Policy Act (NEPA) requires an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to the proposed action.

The Forest Service is soliciting comments during the scoping phase of the environmental analysis process from other Federal, State, and local agencies, Indian Tribes, and organizations and individuals who may be interested or affected by the decision. The analysis process will include:

1. Identification of the issues to be addressed.

2. Identification of the issues to be analyzed in detail.

3. Elimination of non-significant issues, issues addressed by previous environmental analyses, and issues not within the scope of this decision.

DATES: Comments related to the scope of the analysis should be received by April 15, 1996. Comments may be either written or oral.

ADDRESSES: Send written comments to Don G. Carroll, District Ranger, Brush Creek/Hayden Ranger District, P.O. Box 187, Encampment, Wyoming 82325. Oral Comments can be made by calling (307) 327–5481.

FOR FURTHER INFORMATION CONTACT: Andy Cadenhead, Project Coordinator, (307) 327–5481.

SUPPLEMENTARY INFORMATION: The Medicine Bow National Forest Land and Resource Management Plan (Appendix A) identifies three potential timber sales in the Tie Camp analysis area: Commisary Park, Rim Road, and Damfino Creek. The Routt National Forest Land and Resource Management Plan lists the Dinner Park Timber Sale as a potential project in the analysis area. The proposed action is consistent with both the Medicine Bow and Routt National Forest Plans, and is intended to implement both Plans and also achieve the desired future condition for the area.

The decisions to be made consist of how to best manage the area, and whether to implement the proposed activities, including measures designed to mitigate any adverse environmental effects. A reasonable range of alternatives, including ''no action,'' which would result in no development of the area, and the ''proposed action,'' will be considered. Other alternatives may be formulated in response to ''scoping,'' and may consider various combinations of designs for implementing the proposed activities.

The Responsible Official will be Jerry E. Schmidt, Forest Supervisor, Medicine Bow/Routt National Forest, 2468 Jackson Street, Laramie, Wyoming, 82070.

The Draft Environmental Impact Statement (DEIS) is expected to be available during mid-1997 and the Final Environmental Impact Statement (FEIS) available during September, 1997.

A 45-day public comment period on the Draft Environmental Impact Statement will commence on the day the Environmental Protection Agency publishes a ''Notice of Availability'' in the Federal Register.

The Forest Service believes it is important to give reviewers an early notice of several court rulings related to public participation in the environmental review process. First, reviewers of Draft 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 be raised during the Draft Environmental Impact Statement stage, but are not raised until after completion of the Final Environmental Impact Statement, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). As a result of these previous 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 are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final Environmental Impact Statement.

To assist the Forest Service in identifying and considering issues and concerns related to the proposed action, comments on this Draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft document. Comments may also address the adequacy of the Draft Environmental Impact Statement or the merits of the alternatives displayed in the document. Reviewers should refer to the Council on Environmental Quality Regulations at 40 CFR 1503.3 for implementing the procedural provisions of the National Environmental Policy Act for addressing these points. Please note that any comments that are submitted in relation to this DEIS will be considered as public information.

Dated: March 6, 1996.

Jerry E. Schmidt,

Forest Supervisor.

[FR Doc. 96–6758 Filed 3–20–96; 8:45 am]

BILLING CODE 3410–11–M

Intergovernmental Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Intergovernmental Advisory Committee (IAC) will meet on April 4, 1996, at the Howard Johnson Airport Hotel, 7101 NE 82nd Avenue, Portland, Oregon 97220. The purpose of the meeting is to continue discussions on the implementation of the Northwest Forest Plan. The meeting will begin at 9:00 a.m. on April 4 and continue until 4:00 p.m. Agenda items to be discussed include, but are not limited to: (1) recommendations for implementation of proposed data standards by the IRICC Vegetation Strike Team, (2) a progress report on riparian reserve evaluation methods and techniques, and (3) a review of Regional Interagency Executive Committee priorities and work group product integration. The IAC meeting will be open to the public. Written comments may be submitted for the record at the meeting. Time will also be scheduled for oral public comments. Interested persons are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Questions regarding this meeting may be directed to Don Knowles, Executive Director, Regional Ecosystem Office, 333 SW 1st Avenue, P.O. Box 3623, Portland, OR 97208 (Phone: 503–326–6265.

Dated: March 12, 1996.

Donald R. Knowles,

Designated Federal Official.

[FR Doc. 96–6816 Filed 3–20–96; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

March 19, 1996.

DATE AND TIME: Wednesday, March 6, 1996, 12:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW., Room 540, Washington, DC 20425.

STATUS:

Agenda

Information Requests Received From Congress

The Chairperson called a special open meeting in accordance with 45 CFR Section 701.11(b) (1995) to discuss information requests received from Congress. The Staff Director published a press release announcing the meeting on March 5, 1996. This notice is published in the Federal Register after the meeting in order to provide a public record of all Commission meetings as required by 45 CFR Section 702.55 (1995).

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Miguel A. Sapp,

Parliamentarian.

[FR Doc. 96–7030 Filed 3–19–96; 2:25 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[DOCKET 20–96]

Foreign-Trade Zone 82—Mobile, AL; Application for Subzone Status, Zeneca Inc. (Agricultural Chemicals); Mobile County, AL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Mobile, Alabama, grantee of FTZ 82, requesting special-purpose subzone status for the agricultural chemical manufacturing plant of Zeneca Inc. (Zeneca), in Mobile County, Alabama. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 11, 1996.

Zeneca Inc. is a wholly-owned subsidiary of Zeneca Group PLC (U.K.), a bioscience company comprising three global businesses—pharmaceuticals, agrochemicals and seeds, and specialty products. Zeneca Group was created as part of the 1993 worldwide reorganization of Imperial Chemical Industries PLC (U.K.) along industry lines.

Zeneca's Alabama plant (75 acres; 205 tons/day) is located at mile marker 21 on Highway 43, near Bucks (Mobile County), Alabama, some 20 miles north of Mobile. The facility (250 employees) is used to produce and/or distribute a wide range of agricultural chemical products, including herbicides, pesticides, insecticides and organic intermediate chemicals. Herbicides include DEVRINOL®, EPTAM®, ORDRAM®, PREFAR® and BETASAN®, RONEET®, SUTAN®, TILLAM®, VERNAM®, ICIA 0574 and ICIA 2957. Insecticides include AMBUSH®, PRELUDE®, CYMBUSH®, DEMON®, DYFONATE®, IMIDAN®, and PROLATE®. Chemical intermediates include phosphorous trichloride and thiophenol. The application also requests approval for the production of FLEX® (herbicide), for which a plant expansion is currently underway. The active ingredients for a number of these products are or would be sourced abroad. For those products currently produced in the U.S., foreign-sourced materials account for some 10 percent of finished product value. Approximately 25 percent of the plant's production is exported.

Zone procedures would exempt Zeneca from Customs duty payments on foreign materials used in production for export. On domestic sales, the company would be able to choose the duty rates that apply to the finished products instead of the duty-rates that would otherwise apply to the foreign-sourced materials. The HTSUS category and duty rates for the final products and associated inputs are as follows:

Final Product/Input	HTSUS No.	Duty rate
FLEX®	2935.00.1300	Duty-free.
R118118	2916.31.5000	$0.03/kg + 16.8%.
Acifluorifen acid	2934.90.1500	12.8%.
Potassium carbonate	2836.40.1000	1.9%.
AMBUSH®/PRELUDE®/	2916.70.0000	3.7%.
Pba	2909.49.1500	18.6%.
CYMBUSH®/DEMON®/	2916.20.0000	3.7%.
Pbald	2912.49.2500	11.3%.
DEVRINOL®/	3823.90.5050	5.0%.
Cpa	2926.90.4700	18.6%.

At the outset, zone procedures would be mainly used in the production of FLEX±. The application indicates that the savings from zone procedures will help improve the Mobile County plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to

investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 20, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to June 4, 1996).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Customs Service Port Director's Office, Suite 3004, 150 N. Royal Street, Mobile, Alabama 36602

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: March 13, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–6858 Filed 3–20–96; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 807]

Grant of Authority for Subzone Status C. Ceronix, Inc. (Video Display Monitors), Auburn, CA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Port of Sacramento, grantee of Foreign-Trade Zone 143, for authority to establish special-purpose subzone status at the gaming/recreational machine video display monitor manufacturing plant of C. Ceronix, Inc., located in Auburn, California, was filed by the Board on March 28, 1995, and notice inviting public comment was given in the Federal Register (FTZ Docket 10–95, 60 FR 17514, 4/6/95); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 143A) at the C. Ceronix, Inc., plant in Auburn, California, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 12th day of March 1996.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration Alternate Chairman, Foreign-Trade Zones Board.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–6859 Filed 3–20–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–122–804, C–122–805]

New Steel Rail, Except Light Rail, From Canada; Final Results of Changed Circumstances Antidumping and Countervailing Duty Administrative Reviews, and Revocation in Part of Antidumping and Countervailing Duty Orders

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Final results of changed circumstances antidumping and countervailing duty administrative reviews, and revocation in part of antidumping and countervailing duty orders.

SUMMARY: On September 15, 1989, the Department of Commerce (the Department) published an antidumping duty order on new steel rail, except light rail, from Canada. The Department published a countervailing duty order on new steel rail, except light rail, from Canada on September 22, 1989. On November 30, 1995 the Department simultaneously initiated changed circumstances antidumping and countervailing duty administrative reviews and the preliminary results of these reviews with intent to revoke the orders in part. We are now revoking these orders in part, with regard to 100 ARA–A new steel rail, except light rail, from Canada, because this portion of these orders is no longer of interest to domestic parties.

EFFECTIVE DATE: March 21, 1996.

FOR FURTHER INFORMATION CONTACT: Roy F. Unger, Jr., Office of Antidumping Compliance or Robert Copyak, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0651 and (202) 482–2209, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 15, 1989, the Department published an antidumping duty order on new steel rail, except light rail, from Canada (54 FR 38263). The Department published a countervailing duty order on new steel rail, except light rail, from Canada, on September 22, 1989 (54 FR 39032). On October 20, 1995, Cleveland Track Material, Inc., requested that the Department conduct changed circumstances administrative reviews to determine whether to partially revoke the orders with regard to 100ARA–A new steel rail. The orders with regard to imports of new steel rail other than 100ARA–A were not affected by this request. In addition, the petitioners in this case informed the Department that they, as a representative of the U.S. steel rail industry, did not oppose the revocation of the orders with regard to 100ARA–A new steel rail from Canada.

We preliminarily determined that petitioner's affirmative statement of no interest constitutes good cause for conducting changed circumstances reviews. Consequently, on November 30, 1995, the Department published a notice of initiation and preliminary results of changed circumstances antidumping and countervailing duty administrative reviews to determine whether to revoke these orders in part (60 FR 61538). We gave interested parties an opportunity to comment on the preliminary results of these changed circumstances reviews. We received no comments.

Scope of Review

The merchandise covered by these changed circumstances reviews are imports of 100ARA–A new steel rail, except light rail, whether of carbon, high carbon, alloy or other quality steel, and includes standard rails, all main line sections, heat-treated or head-hardened (premium) rails, transit rails, contact rail (or ''third rail'') and crane rails. This merchandise is currently

classified under subheadings 7302.10.1020, 7302.10.1040, 7302.10.5000, and 8548.00.0000 of the Harmonized Tariff Schedule (HTS). The HTS numbers are provided for convenience and Customs purposes. The written description of the scope of these reviews remains dispositive.

These changed circumstances administrative reviews cover all manufacturers/exporters of 100 ARA–A steel rail, except light rail, from Canada.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Final Results of Review; Partial Revocation of Antidumping and Countervailing Duty Orders

The affirmative statement of no interest by petitioners in this case constitutes changed circumstances sufficient to warrant partial revocation of these orders. Therefore, the Department is partially revoking these orders on new steel rail, except light rail, from Canada, with regard to 100ARA–A new steel rail, except light rail, from Canada in accordance with sections 751 (b) and (d) and 782(h) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 353.25(d)(1) and 355.25(d)(1). Although our preliminary results stated that we would revoke the antidumping duty order in part retroactive to August 1, 1994, the Office of Countervailing Compliance has already liquidated entries for calendar year 1994. In addition, the anniversary month for this antidumping case is September. Therefore, this partial revocation, for antidumping purposes, applies to all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after September 1, 1994, and, for countervailing duties, all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after January 1, 1995.

The Department will instruct the U.S. Customs Service (Customs) to proceed with liquidation, without regard to antidumping or countervailing duties, of all unliquidated entries of 100ARA–A new steel rail from Canada entered, or withdrawn from warehouse, for consumption on or after September 1, 1994, for antidumping duties and on or after January 1, 1995, for countervailing duties. The Department will further instruct Customs to refund with interest any estimated duties collected with respect to unliquidated entries of 100ARA–A new steel rail from Canada entered, or withdrawn from warehouse, for consumption on or after September 1, 1994, for antidumping duties and on or after January 1, 1995, for countervailing duties, in accordance with section 778 of the Act.

This notice also serves as a reminder to parties subject to administrative protection orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d) and 355.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This changed circumstances administrative review, partial revocation of the antidumping and countervailing duty orders, and notice are in accordance with sections 751 (b) and (d) and 782(h) of the Act and sections 353.22(f), 353.25(d), 355.22(h), and 355.25(d) of the Department's regulations.

Dated: March 14, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–6864 Filed 3–20–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–351–809, A–580–809, A–201–805, A–307–805]

Final Negative Determination of Scope Inquiry on Certain Circular Welded Non-Alloy Steel Pipe and Tube From Brazil, the Republic of Korea, Mexico and Venezuela

AGENCY: Import Administration, International Trade Administration Commerce.

ACTION: Notice of Final Negative Determination of Scope Inquiry.

SUMMARY: On January 13, 1994, we preliminarily determined that (i) pipe certified to American Petroleum Institute (API) 5L line pipe specifications (API 5L line pipe or line pipe) and (ii) pipe certified to both the API 5L line pipe specifications and the less-stringent American Society for Testing and Materials (ASTM) A–53 standard pipe specifications (dual-certified pipe,[1]) when actually used as certain circular welded non-alloy steel pipe (standard pipe), and falling within the physical parameters outlined in the scope of the orders, are within the scope of the antidumping duty orders on standard pipe from Brazil, the Republic of Korea, Mexico and Venezuela. *See Preliminary Affirmative Determination of Scope Inquiry*, 59 FR 1929 (January 13, 1994) (*Preliminary*). We gave interested parties an opportunity to comment.

After a thorough analysis of the comments received from the parties, as well as a review of the record evidence from the less-than-fair-value (LTFV) investigations which gave rise to these antidumping duty orders, we determine that (i) pipe certified to the API 5L line pipe specification, and (ii) pipe certified to both the API 5L line pipe specifications and the less-stringent ASTM A–53 standard pipe specifications which fall within the physical parameters outlined in the scope of the orders and enter as line pipe of a kind used for oil and gas pipelines are outside the scope of the antidumping duty orders on certain welded carbon steel non-alloy pipe from Brazil, Korea, Mexico and Venezuela, irrespective of end use.

EFFECTIVE DATE: March 21, 1996.

FOR FURTHER INFORMATION CONTACT: Robert M. James at (202) 482–5222 or Zev Primor at (202) 482–5253, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute (the Tariff Act of 1930, as amended (the Tariff Act)) and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Background

On April 22, 1993, Allied Tube & Conduit Corporation, Sawhill Tubular Division, Tex-Tube Division American Tube Company, Century Tube Corporation, Laclede Steel Company, LTV Tubular Products Company, Sharon Tube Company, Western Tube & Conduit Corporation, Wheatland Tube Company, and CSI Tubular Products, Inc., petitioners in these cases, requested that the Department of

[1] This merchandise, sometimes referred to as ''dual-stenciled,'' may also include ''multiple-stenciled'' pipe.

Commerce (the Department) conduct an anticircumvention inquiry. Petitioners argued pursuant to section 781(c) of the Tariff Act and 19 CFR 353.29(g)(1993), that certain exports from Brazil, Korea and Mexico of API 5L line pipe and dual-certified pipe were circumventing the antidumping duty orders on standard pipe because they were actually used in a standard pipe application. The Department concluded that a scope inquiry pursuant to 19 CFR 353.29(i) was the appropriate avenue for addressing the issues raised by petitioners.

The Department initiated its scope inquiry on June 7, 1993 and granted interested parties the opportunity to comment on whether API 5L line pipe and dual-certified pipe, when used in standard pipe applications, are within the scope of the orders. We received comments from petitioners and six respondents on July 6, 1993 and rebuttal comments on July 19, 1993. Petitioners and five respondents also met separately with the Acting Assistant Secretary for Import Administration to voice their concerns on this issue.

Exports of standard pipe from Venezuela were the subject of a concurrent antidumping investigation. The scope of the resulting order is identical to that of the orders covering Brazil, Korea and Mexico. As a result, we determined that it was appropriate to include imports from Venezuela in the present scope inquiry. See Memorandum from Director, Office of Antidumping Compliance, to Deputy Assistant Secretary for Compliance, October 25, 1993 (hereafter, October 25 Memorandum). In this memorandum we also determined that the record evidence regarding the scope of the orders contained sufficient ambiguity to necessitate further comments by the parties. Accordingly, we asked that interested parties comment on the so-called ''Diversified Products'' criteria (see below). Petitioners and four respondents filed comments on November 22, 1993 and rebuttals on December 3, 1993.

On January 13, 1994, the Department published in the Federal Register its preliminary affirmative scope determination. We concluded that sufficient ambiguity existed in the record to necessitate consideration of the ''Diversified Products'' criteria found at 19 CFR 353.29(i)(2). We further determined that the meaning of certain exclusionary language in the scope of the orders was unclear and, further, that petitioners had predicated this exclusionary language upon the ''actual end use'' of the subject merchandise (as opposed to the ''chief'' or ''primary end use,'' as respondents argue). We further determined that the scope language ''does not clearly include or exclude line pipe or dual certified pipe . . . which is actually used in standard pipe applications.'' *Preliminary* at 1930. As a result of our Diversified Products analysis, we determined that line pipe and dual-certified pipe, when actually used in a standard pipe application and falling within the physical parameters outlined in the orders, are within the scope of these orders. *See* Preliminary at 1933.

Since publication of our preliminary determination we received comments and rebuttal comments from the following parties: petitioners; Mannesmann Pipe & Steel Corporation (Mannesmann); Korea Iron and Steel Association, Dongbu Steel Company, Ltd., Hyundai Steel Pipe Company, Ltd., Korea Steel Pipe Company, Ltd., Pusan Steel Pipe Company, Ltd., and Union Steel Manufacturing Company, Ltd. (collectively, the Korean respondents); Hyundai Pipe Co., Ltd. (Hyundai); Villacero and Tuberia Nacional (Villacero); Hylsa, S.A. de C.V. (Hylsa); and Western American Manufacturing, Inc. (Western). The Governments of Korea and Mexico also submitted comments.

On April 13, 1994, the Department issued a draft end-use certificate and requested comments from the interested parties regarding implementation of end-use certification procedures in the event of a final affirmative determination. Petitioners, respondents, and the Government of Mexico commented on the draft end-use certificate, as did a number of U.S. pipe importers and distributors. In light of our negative final determination, however, the issue of end-use certification is moot, so we have not addressed these comments.

Analysis

The regulations governing the Department's antidumping scope determinations can be found at 19 CFR 353.29. Our criteria for determining whether a product is included in the scope of an order are set forth in section 353.29(i)(1). These criteria are the descriptions of the merchandise contained in the order, the petition, the initial LTFV investigation, and the determinations of the Department and the International Trade Commission (ITC). If these descriptions are not dispositive of the issue, the Department will further consider the factors provided for under 19 CFR 353.29(i)(2), commonly referred to as the ''Diversified Products'' criteria (see *Diversified Products Corp. v. United States*, 572 F. Supp. 883 (CIT 1983)). These factors are as follows: (i) the physical characteristics of the product subject to the scope inquiry; (ii) the expectations of the ultimate purchasers; (iii) the ultimate use of the product; and (iv) the channels of trade. However, if the record of the Department's and ITC's proceedings *is* dispositive of the issue, then the Department will issue a final scope determination without reference to the ''Diversified Products'' criteria.

After careful consideration of the comments by the interested parties, and based upon our review of the record for purposes of this final determination, we have determined that the scope language adopted by the Department in the antidumping duty orders excludes line pipe and dual-certified pipe. This conclusion is supported by the record of the Department's original investigations. We will address each of the relevant aspects of the original investigations in turn, below.[2]

The Language of the Petitions Did Not Address Line or Dual-Certified Pipe

The original antidumping duty petitions defined the subject merchandise as ''welded non-alloy steel pipes, of circular cross-section, not more than 406.4 mm (16 inches) in outside diameter regardless of wall thickness, surface finish . . . or end finish . . . These pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications.'' Antidumping Petition, September 24, 1991 at 4. The product descriptions continued, as required by our regulations,[3] with an illustrative listing of typical uses for standard pipe, and observed that the subject merchandise is most commonly produced to the ASTM A–53 specification for standard pipe. The petitions did not mention either line pipe or dual-certified pipe.

In its initiation notice, the Department adopted petitioners' language to define the merchandise covered by the six concurrent investigations and also did not mention either line pipe or dual-certified pipe. *See Initiation of Antidumping Duty Investigations: Circular Welded Non-Alloy Steel Pipe*

[2] Because in this final scope determination we have found the scope language to be dispositive, we have not addressed the ''Diversified Products'' criteria found in section 353.29(i)(2), nor have we specifically addressed comments by the parties on these criteria.

[3] 19 CFR 353.12(b)(4) directs petitioners to include ''[a] detailed description of the merchandise that defines the requested scope of the investigation including technical characteristics and *uses of the merchandise*, and its current U.S. Tariff classification number.'' (Emphasis added.)

from Brazil, the Republic of Korea, Mexico, Romania, Taiwan and Venezuela, 56 FR 52528 (October 21, 1991). The petitions and the Department's notice of initiation do not indicate that actual end use was a consideration in crafting the scope of the investigations. To the extent that uses of the subject merchandise are noted, this was in accordance with the Department's regulations. These materials support the conclusion that physical characteristics, not actual end uses, defined the scope of the petitions and the initial investigations. However, the petitions and the initiation notice do not address and, therefore, do not definitively resolve the treatment of line pipe or dual-certified pipe.

The Final Scope Language Adopted by the Department Excludes Line and Dual-Certified Pipe

While the record reflects some initial uncertainty at least as to whether multiple-stenciled pipe was covered by the Department's investigations, this uncertainty was resolved early in the proceedings. Prior to submitting their questionnaire responses, respondents requested clarification as to whether triple-certified pipe was included in the scope of the investigations. See Memoranda, Case Analyst to the File, November 15, 1991. In their comments of November 19, 1991, petitioners recognized that an importer could sell dual-certified pipe entered under the HTS line pipe item into either the line pipe or standard pipe market after it entered the United States.[4] Indeed, the purpose of dual-certifying a product is to alert potential consumers of that product's suitability for use in either line pipe or standard pipe applications. Petitioners did not tie treatment of dual-certified pipe to the market in which it was sold. Instead, petitioners stated that ''[d]ual or triple certified standard pipe should be covered by these investigations only if they enter the United States under one of the tariff numbers listed in section I.D.3 of the petitions.'' These tariff numbers, under heading 7306.30 of the HTS, cover standard pipe, and not line or dual-certified pipe. See Petitioners' November 19, 1991 submission at 1. Petitioners further stated that ''[a]ny pipe entered under [HTS] item 7306.10.10 [i.e., the item heading for line pipe] would be line pipe outside the scope of the petitions.'' This statement indicates that in the petitioners' view, the inclusion or exclusion of line pipe is tied to the HTS category.

With regard to dual-certified pipe, petitioners noted that this pipe ''generally enters the United States under the separate tariff item H[T]S 7306.10.10 while other standard pipe enters into tariff items H[T]S 7306.30.10 or 7306.30.50.'' Petitioners explained that:

> ''General Rules of Interpretation 6 and 3(a) of the [HTS] provide that goods that are classifiable under two or more tariff subheadings are to be classified under the subheading providing the most specific description. Subheading 7306.10 which covers 'line pipe of a kind used for oil and gas pipelines' is more specific than, and therefore takes precedence over, subheading 7306.30, 'other, welded, of circular cross-section, of iron or non-alloy steel'.''[5]

Here, petitioners recognized that dual-certified pipe was entering the United States under the HTS item for line pipe because the proper Customs classification for dual-certified pipe is under this item. Taken together, these statements establish that petitioners understood that HTS classification of pipe products was based upon the specificity of the category, not actual use, and that dual-certified pipe would be placed in the line pipe category and, thus, excluded from the order.

Petitioners reiterated their intention to exclude any pipe entered as line pipe in a March 5, 1992 letter to the Department (addressing structural tubing and mechanical tubing). In this submission, petitioners stated that ''[t]he scope, as defined by the petition, the Department and the Commission, clearly excludes both imports of line pipe entering the United States in [HTS] category 7306.10 and oil country tubular goods . . .''.

Accordingly, the Department did not require respondents to report API 5L line pipe and dual-certified pipe as part of its investigations, and our preliminary and final determinations of sales at less-than-fair-value adopted the exclusionary language suggested by petitioners in defining the scope of the orders:

> . . . circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, bevelled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells.
>
> The scope is not limited to standard pipe and tube fencing or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon steel pipes and tubes within the physical description outlined above are included within the scope of this investigation, *except line pipe,* oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. *Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind used for oil or gas pipelines is also not included in this investigation.*[6]

In keeping with the petition and petitioners' November 19, 1991 letter, the scope language adopted by the Department does not make actual end use a principal consideration in defining the products covered by the investigations. The first paragraph of the scope language merely describes the physical characteristics of the subject merchandise and offers, as do many antidumping duty orders, an illustrative list of its typical uses. The second paragraph states that ''[a]ll carbon steel pipes and tubes within the physical description outlined above are included within the scope of these orders . . .''. Therefore, the language of the scope of the orders relies on physical characteristics, not on actual or potential end uses.

The scope language goes on to specifically exclude certain types of pipe that fit the physical description, including ''line pipe, oil country tubular goods, pipe and tube hollows for redraws, finished scaffolding, and finished conduit.'' The scope language excludes these separate categories of pipe, based upon industry classifications, without discussion of actual end uses. It follows that line pipe is not covered by the order regardless of how it is finally used.

As to dual-certified pipe, the same analysis of the order's language holds. The scope provides that ''[s]tandard pipe that is dual or triple certified/

[4] Petitioners reiterated this knowledge in their April 22, 1993 anticircumvention petitions: ''[E]nd users of dual-certified pipe knew that such pipe could be used as either line pipe or standard pipe . . . End users in the plumbing and building trade, for example, purchase it for use as standard pipe while energy companies and utilities purchase it for use as line pipe.'' Anticircumvention Petitions at 13.

[5] Petitioners' November 19, 1991 Letter at 1 and 2.

[6] *Final Determination of Sales at Less Than Fair Value,* 57 FR 42940 (September 17, 1992); see also *Preliminary Determination of Sales at Less Than Fair Value,* 57 FR 17883 (April 28, 1992) (emphasis added).

stenciled that enters the U.S. as line pipe of a kind used for oil or gas pipelines is also not included in these orders.'' The emphasis on pipe ''that enters the U.S. as line pipe,'' language suggested by petitioners, underscores that the key factors the Department used in determining the scope of the investigations were the physical characteristics and the classification of the merchandise as it passed through U.S. Customs (*i.e.*, ''enters the U.S.''), and not on its disposition at some later point in the stream of commerce. This conclusion is supported by the fact that the phrase ''line pipe of a kind used for oil and gas pipelines'' is taken verbatim from HTS item 7306.10.10. The phrase ''of a kind used for'' is commonly used by Customs to signify the chief, or principal, use of a product and not its actual use. See *Group Italglass U.S.A., Inc.* v. *United States*, Slip Op. 93–46 at 6 (CIT March 29, 1993) (''The language in heading 7010 'of a kind' preceding 'used for' simply buttresses the interpretative rule for use provisions that it is the use of the class or kind of goods imported that is controlling rather than the use to which the specific imports were put.''). Therefore, by the language of the scope, if pipe enters the United States as pipe ''of a kind used for oil and gas pipelines'' (*i.e.*, is classified by Customs under HTS item 7306.10.10), it is excluded from the scope of the orders.

The Determinations of the ITC Did Not Cover Line Pipe

The ITC, in defining the like product for purposes of its injury investigations, followed the language adopted by the Department in the notice of initiation. In its preliminary determination, the ITC first discussed the products ''subject to these investigations;'' the ITC later defined line pipe and dual-certified pipe under the separate heading ''Other Pipe and Tube Products,'' stating that line pipe is ''produced to meet different specifications than 'standard' pipes, and a large percentage of line pipes are made to larger diameters than the pipes and tubes subject to these investigations.'' Determinations of the Commission (Preliminary), USITC Publication 2454 (November 1991) at A–9. The ITC continued to draw a distinction between line and dual-certified pipe in its final determination and did not include producers of line pipe in its definition of the U.S. industry for purposes of its affirmative injury determination. The ITC did not, therefore, examine the impact of imports of line pipe upon the domestic industry. See Determinations of the Commission (Final), USITC Publication 2564 (October 1992) at I–7 through I–13. Under U.S. law, the Department cannot cover within the scope of an order merchandise which has not first been subject to an affirmative injury determination. See Section 731 of the Tariff Act.

The record with respect to dual-certified pipe is less clear. The ITC's ''Producers' Questionnaire'' requested data on domestic production of pipes ''that were single or multiple stenciled to meet *standard pipe specifications*.'' ITC Producers' Questionnaire at 14 (original emphasis; submitted as Exhibit 10 to Petitioners' July 6, 1993 Comments). The ITC noted that 15.5 percent of the reported domestic shipments comprised dual-certified pipe and that ''the products in question were not sold as standard pipe.'' USITC Publication 2564 at I–12, note 20 and I–21, note 48. However, the ITC did not indicate whether or not these shipments were included in its injury analysis. Furthermore, as petitioners have acknowledged, the ITC did not include dual-certified pipe in its purchasers' or importers' questionnaires. *See* Petitioners' February 23, 1994 Comments at 16. Therefore, while the ITC's determinations support the conclusion that line pipe is not covered, the record with respect to the ITC's treatment of dual-certified pipe is inconclusive, but cannot be read to conflict with the Department's scope language excluding dual-certified pipe.

In light of the language of the scope and the underlying record of the investigations, the Department has concluded that an affirmative scope ruling would be contrary to the scope language as written and would represent an impermissable expansion of the scope of the orders. Accordingly, we have concluded that API 5L line pipe and dual-certified pipe do not fall within the scope of the orders.

Comments by the Parties

Petitioners maintain that our preliminary affirmative scope determination is correct, is supported by substantial record evidence and is in accordance with law. According to petitioners, the ''plain language'' of the scope includes *all* pipe meeting the published physical description of the subject merchandise which is used as, or intended for use as, standard pipe ''without regard to the tariff number or industry specifications.'' Petitioners' February 16, 1994 Comments at 2. In light of the Department's preliminary determination that the scope is not dispositive of this issue, petitioners aver that the Department's analysis of the ''Diversified Products'' criteria leads properly to the same affirmative determination. *Id.* at 3.

Petitioners support the Department's preliminary conclusion (as outlined in its October 25 Memorandum) that petitioners relied upon HTS item numbers to identify merchandise covered by the investigations because they presumed incorrectly that these tariff classifications were based upon the actual and not the principal end use of the merchandise. Petitioners February 23, 1994 Rebuttal Comments at 9 and 10. Further, petitioners suggest, the Department's statements in the orders' scope that standard pipes ''are intended for [specific uses]'' and that ''line pipe of a kind used for oil and gas pipelines is excluded'' constitute an ''actual'' end-use test and that the merchandise covered by the scope of the orders is, in fact, defined in terms of actual end use. Thus, the Department must conduct an analysis of whether the merchandise is actually used in a standard- or line-pipe application. *See, e.g.*, Petitioners' Rebuttal Comments, February 23, 1994 at 7 through 9, and 12 through 13. Petitioners further argue that the Court of International Trade (CIT), in *Ipsco, Inc.* v. *United States*, 715 F. Supp. 1104 (CIT 1989) (*Ipsco*), held that the Department's use of the phrase ''intended for use'' permits an inquiry into how the API 5L and dual-certified pipes at issue here are actually used. *Id.* at 14.

Finally, Petitioners suggest that, because the ITC included in its analysis dual-certified pipe used as standard pipe, a final affirmative determination would be fully consonant with the requirement, pursuant to the statute and the General Agreement on Tariffs and Trade (GATT), that products be subject to an affirmative injury finding prior to the imposition of antidumping duties. *Id.* at 15.

Hylsa, the Korean Respondents, Mannesmann, Villacero and Western agree that the plain language of the scope of these orders is dispositive of this issue in that this language expressly excludes the subject products. Respondents further argue that use, actual or otherwise, played no role in the Department's determination of the scope of the orders. Respondents suggest that the phrase ''of a kind used for'' is a Customs ''term of art'' which imposes a chief- or primary-use test, not an actual end-use test. *See, e.g.*, Villacero's Comments, February 11, 1994 at 7; Korean Respondents' Comments, February 16, 1994 at 6 and 7, and 8 through 17, and Hylsa's Comments, February 16, 1994 at 4 through 9. Respondents also find the *Ipsco* decision inapposite here,

contending that the issue before the CIT in *Ipsco* involved an order where *''end use was the defining characteristic''* of that order's scope. Hyundai's Comments, February 15, 1994 at 7 (original emphasis). In contrast, argue respondents, the scope of the standard pipe orders includes *''express exclusionary language;''* therefore, respondents contend, ''the list of end uses is, as the Department itself concedes, 'illustrative'.'' Korean Respondents' Comments, February 16, 1994 at 25 (original emphasis).

Hylsa, Hyundai, the Korean Respondents, Mannesmann and Villacero also argue that, contrary to the statute and the GATT, inclusion of API 5L line pipe and dual-certified pipe would subject merchandise to antidumping duties without the requisite affirmative determination of material injury to the domestic industry. Citing to these and previous investigations of standard and line pipe, respondents contend that the ITC has consistently identified line pipe as a separate like product. *See, e.g.,* Korean Respondents' February 16, 1994 Comments at 35 and 36. In these investigations, respondents continue, the ITC limited its injury analysis to the domestic standard pipe industry and, therefore, did not include line or dual-certified pipe in its investigations.

The Department's Response

For the reasons cited in the analysis section above, the Department disagrees with petitioners. After further review of the record evidence, we find that the language of the orders excludes API 5L line pipe and dual-certified pipe irrespective of actual end use. While there may be uncertainty over why these products were excluded from the orders, as suggested in our October 25 Memorandum, the descriptions of the merchandise contained in the petition, the initial investigations, and the determinations of the Department and the ITC, plus the record compiled during this scope inquiry, indicate that it is correct to conclude that API 5L line pipe and dual-certified pipe were excluded from these proceedings from their inception. Further, these documents indicate that at the time the petition was filed and during the investigations, the actual end use of the imported merchandise was not a determinative factor in the formulating the scope description which was, rather, based upon physical characteristics coupled with product classifications under the Harmonized Tariff Schedule of the United States.[7]

With respect to petitioners' argument that they misunderstood the underlying principles of the HTS tariff classifications, as stated in the analysis section above, petitioners' November 19, 1991 letter recognizes that the classification system is based on the specificity of the HTS category, and that dual-certified pipe entered as line pipe could be sold and actually used as either standard or line pipe following importation. Further, petitioners state in their July 6, 1993 scope comments that their position with respect to pipe entered under HTS item 7306.10.10 was based not on the actual use of the pipe but, rather, on petitioners' lack of interest in pursuing the small quantity of dual-certified pipe entered under HTS item 7306.10.10 which might later be used as standard pipe. Petitioners noted their ''belief that little imported dual stencilled pipe entered as line pipe was going into standard pipe applications'' and suggested that the quantity of dual-certified pipe actually used in standard pipe applications ''would have little or no impact on the operation of a dumping order.'' Petitioners July 6, 1993 Scope Comments at 10.[8]

Even if it were the case, as we suggested in our October 25 Memorandum, that petitioners operated under the ''incorrect presumption'' that HTS tariff numbers were based upon actual end use, and that the subject merchandise would be so classified (*see* October 25 Memorandum at 5, note 5 and 8), the Department does not now have the discretion to ''correct'' this misapprehension within the context of a scope inquiry. It is well established that the Department has the authority to clarify the scope of an antidumping duty order. The Department may not, however, modify or expand the scope of an order ''in a way contrary to its terms.'' See, *e.g., Smith Corona Corp.* v. *United States,* 915 F.2d 683 (Fed. Cir. 1990); *Alsthom Atlantique* v. *United States,* 787 F.2d 565 (Fed. Cir. 1986); *Royal Business Machines* v. *United States,* 669 F.2d 692 (Fed. Cir. 1982).[9] Moreover, regardless of petitioners' intentions, the fact remains that, as a result of the scope language suggested repeatedly by petitioners and adopted by the Department in its initiation of these investigations, the ITC did not consider whether the domestic industry was injured by imports of line pipe; with respect to dual-certified pipe, the record is unclear.

As to the decision in *Ipsco,* it is inapposite to the instant scope inquiry. In *Oil Country Tubular Goods from Canada* (which gave rise to the *Ipsco* decision) the actual end use of the merchandise was an explicit part of the scope of the order which contains no exclusionary provisions whatever. See *Antidumping Duty Order: Oil Country Tubular Goods (OCTG) from Canada* 51 FR 21782 (June 16, 1986). In contrast to that case, here the scope of the order is driven by physical characteristics and tariff classification of the merchandise, not actual end use, and specifically excludes certain categories of pipe, including line and dual-stenciled pipe, without reference to intended or actual uses.

Conclusion

For the reasons cited above, the Department determines that: (i) pipe certified to the API 5L line pipe specification, and (ii) pipe certified to both the API 5L line pipe specifications and the less-stringent ASTM A–53 standard pipe specifications which fall within the physical parameters outlined in the scope of the orders and enter as line pipe of a kind used for oil and gas pipelines are outside the scope of the antidumping duty orders on certain welded carbon steel non-alloy pipe from Brazil, Korea, Mexico and Venezuela, irrespective of end use. We will notify

[7] Petitioners also suggest that the order provides HTS numbers ''for convenience and customs purposes'' and the written descriptions of the merchandise are dispositive. See Petitioners' February 23, 1994 Rebuttal Comments at 5 and note 13. While the Department typically includes this disclaimer in its published notices, here, petitioners explicitly based the product coverage upon HTS classifications, and quoted directly from the applicable Customs language to further buttress this emphasis on tariff classifications. The Department's adoption of petitioners language and reliance upon Customs classifications is, in fact, part of the written description of the scope and is, therefore, controlling.

[8] In their April 22, 1993 request for an anticircumvention inquiry (which gave rise to the instant scope inquiry), petitioners maintained that the scope ''specifically excludes'' API 5L line and dual-certified pipe. Petitioners quoted the Department's scope language that ''pipe that is dual or triple certified-stenciled that enters the U.S. as line pipe of a kind used for oil and gas pipelines is also not included in this investigation,'' and stated that ''[l]ine pipe is also specifically excluded'' from the scope of the orders. See Petitioners' April 22, 1993 Anticircumvention Petition at 3 and 25. Petitioners included these statements as part of their explanation of why anticircumvention proceedings, and not a scope inquiry, were necessary to address petitioners' concerns.

[9] This does not, however, preclude the Department's addressing the types of concerns raised here by petitioners at the investigation stage of a proceeding in formulating the scope language. In fact, the Department has addressed these same concerns in several recent pipe investigations. See, *e.g., Final Determination of Sales at Less Than Fair Value: Certain Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil,* 60 FR 31960 (June 19, 1995).

directly the U.S. Customs Service of this determination.

Dated: March 14, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–6862 Filed 3–20–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–533–809]

Certain Forged Stainless Steel Flanges From India; Antidumping Duty Administrative Review; Time Limits

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

ACTION: Notice of Extension of Time Limits.

SUMMARY: The Department of Commerce (the Department) is extending the time limits of the preliminary and final results of the new shipper antidumping duty administrative review of certain forged stainless steel flanges from India. The review covers one manufacturer/exporter of the subject merchandise to the United States and the period March 1, 1995 through August 31, 1995.

EFFECTIVE DATE: March 21, 1996.

FOR FURTHER INFORMATION CONTACT: Karen H. Park or John Kugelman, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION: Because this review is extraordinarily complicated, the Department is extending the time limits for completion of the preliminary results until July 19, 1996, in accordance with section 751(a)(2)(B)(iv) of the Trade and Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994. We will issue our final results for this review by December 16, 1996.

These extensions are in accordance with section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(3)(A)).

Dated: March 14, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–6861 Filed 3–20–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–428–810]

High-Tenacity Rayon Filament Yarn From Germany; Antidumping Duty Administrative Review; Time Limits

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

ACTION: Notice of Extension of Time Limits.

SUMMARY: The Department of Commerce (the Department) is extending the time limits of the preliminary and final results of the third antidumping duty administrative review of high-tenacity rayon filament yarn from Germany. The review covers one manufacturer/exporter of the subject merchandise to the United States and the period June 1, 1994 through May 31, 1995.

EFFECTIVE DATE: March 21, 1996.

FOR FURTHER INFORMATION CONTACT: Matthew Blaskovich or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–5831/4114.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the time limits mandated by Section 751(a)(3)(A) of the Trade and Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994, the Department is extending the time limits for completion of the preliminary results until June 27, 1996. We will issue our final results for this review by September 25, 1996.

These extensions are in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(3)(A)).

Dated: March 14, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–6863 Filed 3–20–96; 8:45 am]

BILLING CODE 3510–DS–P

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96–006. *Applicant:* The Scripps Research Institute, 10666 North Torrey Pines Road, La Jolla, CA 92037. *Instrument:* Electron Microscope, Model CM 200. *Manufacturer:* Philips, The Netherlands. *Intended Use:* The instrument will be used for studies of the structure of tobacco, alfalfa, and cucumber mosaic viruses, muscle proteins, nuclear pore complexes, microtubules, CHIP28 water channels, acetylcholine receptors, gap junctions, rotavirus and reovirus, and rice yellow mottle virus. The goals of the investigations are in general to understand the structural basis for how the subcellular organelles and supramolecular assemblies function and to elucidate the role that they play in the life of the cell. In addition, the instrument will be used to provide training in use of the electron microscope as a research tool. *Application Accepted by Commissioner of Customs:* February 2, 1996.

Docket Number: 96–009. *Applicant:* New York University Medical Center, Skirball Institute of Biomolecular Medicine, 550 First Avenue, New York, NY 10016. *Instrument:* Electron Microscope, Model CM 200. *Manufacturer:* Philips, The Netherlands. *Intended Use:* The instrument will be used for determining the structure of biological macromolecules (i.e., proteins). The objectives of the research are to elucidate the physical and chemical properties of these protein molecules in order to better understand how they accomplish their respective cellular functions. *Application Accepted by Commissioner of Customs:* February 9, 1996.

Docket Number: 96–010. *Applicant:* University of New Mexico, 200 Yale Boulevard NE, Albuquerque, NM 87131. *Instrument:* Mass Spectrometer, Model VG Sector 54. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* The instrument will be used for measurement of $^{230}Th/^{232}Th$ ratios in igneous rocks and the data then used to understand mantle (deep earth) processes, dating of volcanic events, etc. In addition, the instrument will facilitate measurements by students in courses such as Isotopic Principles of Radiogenic Isotope Geochemistry and Geochronology. *Application Accepted*

by Commissioner of Customs: February 12, 1996.

Docket Number: 96–011. *Applicant:* National Institute of Standards and Technology, I270 & Quince Orchard Road, Gaithersburg, MD 20899-0001. *Instrument:* Laser Tracker, Model SMART 310. *Manufacturer:* Leica Inc., Switzerland. *Intended Use:* The instrument will be used in the application of the metrology discipline criteria to determine the dimensional accuracies of large manufactured parts. *Application Accepted by Commissioner of Customs:* February 12, 1996.

Docket Number: 96–012. *Applicant:* University of Albany, SUNY, Department of Geological Sciences, 1400 Washington Avenue, Albany, NY 12222. *Instrument:* Mass Spectrometer, Model OPTIMA. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* The instrument will be used to accurately analyze large volumes of samples in research which includes climatic and paleoclimatic studies and environmental geochemical studies of near surface processes. It will be used primarily to measure the stable isotopes of oxygen and carbon in carbonate and water samples. In addition, the instrument will be used in laboratory section of a stable isotope geochemistry course for upper-level undergraduate and graduate students. *Application Accepted by Commissioner of Customs:* February 14, 1996.

Docket Number: 96–013. *Applicant:* Northern Illinois University, Department of Chemistry, DeKalb, IL 60115-2862. *Instrument:* Diode-Array Detector for Stopped-Flow Spectrometer, Model PDA.1. *Manufacturer:* Applied Photophysics, Ltd., United Kingdom. *Intended Use:* The instrument will be used as an accessory to an existing spectrometer that will be used for the investigation of the chemical reactivity of heme proteins including their reactions with oxidizing agents such as hydrogen peroxide and molecular oxygen, reducing agents such as ferrocytochrome *c* and FE(II) and Co(II) complexes, their electron transfer reactions, and their reactions with small ligands such as fluoride, cyanide, azide, and other nitrogen containing materials. The instrument will be used for educational purposes in three research courses: Chemistry 499H - Research, Chemistry 599 - Research, and Chemistry 699 - Doctoral Research Dissertation. *Application Accepted by Commissioner of Customs:* February 14, 1996.

Docket Number: 96–014. *Applicant:* Columbia University, Lamont-Doherty Earth Observatory, Rte. 9W, Palisade, NY 10964. *Instrument:* Mass Spectrometer, Model OPTIMA. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* The instrument will be used to investigate the stable isotopic composition of oxygen and carbon in naturally-occurring carbonate samples, including coral and shell material. These investigations will involve reconstructing past climatic conditions using the isotopic compositions as indicators of the ambient temperature and water conditions at time of formation. *Application Accepted by Commissioner of Customs:* February 22, 1996.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 96–6860 Filed 3–20–96; 8:45 am]

BILLING CODE 3510–DS–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

March 15, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: March 20, 1996.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6704. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased for five percent allowance for traditional folklore products made from handloomed fabrics.

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 62410, 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.

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 15, 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 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on March 20, 1996, you are directed to amend the directive dated November 30, 1995 to increase the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
334/335	197,205 dozen.
336/636	521,413 dozen.
338/339	1,008,060 dozen.
341	746,675 dozen.
342/642	327,880 dozen.
347/348	1,442,673 dozen.
350/650	143,389 dozen.
351/651	426,244 dozen.
634/635	262,305 dozen.
638/639	1,291,113 dozen.
641	1,999,679 dozen.
647/648	2,859,464 dozen.

[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 to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.96–6865 Filed 3–20–96; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

March 15, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: March 20, 1996.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6713. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, special shift and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 62412, published on December 7, 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.

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 15, 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 Novembr 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996.

Effective on March 20, 1996, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
Levels in Group I	
338/339	2,435,724 dozen.
342/642	554,839 dozen.
350	74,760 dozen.
351/651	628,673 dozen.
369–S [2]	211,948 kilograms.
638/639	1,747,658 dozen.
645/646	612,130 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1995.

[2] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–6866 Filed 3–20–96; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

New York Futures Exchange; Applications for Designation as a Contract Market in Options on the British Pound, Deutsche Mark, Japanese Yen, and Swiss Franc Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of a proposed commodity option contract.

SUMMARY: The New York Futures Exchange (NYFE or Exchange) has applied for designation as a contract market in options on its British Pound, Deutsche Mark, Japanese Yen, and Swiss Franc futures contracts. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before April 22, 1996.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW, Washington, DC 20581. Reference should be made to the NYFE British Pound, Deutsche Mark, Japanese Yen, and Swiss Franc futures option contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW, Washington, DC 20581; telephone (202) 418–5277.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., N.W., Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5097.

Other materials submitted by the NYFE may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the

proposed terms and conditions, or with respect to other materials submitted by the NYFE, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on March 15, 1996.

Blake Imel,

Acting Director.

[FR Doc. 96–6802 Filed 3–20–96; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Collegiate Education Advisory Committee

AGENCY: U.S. Army Cadet Command.

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Collegiate Education Advisory Committee.

Date of Meeting: 20 April 1996.

Place of Meeting: Radisson Hotel, Hampton, Virginia.

Time of Meeting: 0830–1700 on 20 April 1996.

Proposed Agenda: Review and discussion of the statue of Army ROTC since the September 1995 meeting at the Radisson Hotel, Hampton, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Spadafora, U.S. Army Cadet Command, ATTCC–TE, Fort Monroe, Virginia 23651–5000; phone (804) 727–4595.

SUPPLEMENTARY INFORMATION:

1. The Committee will review the significant changes in ROTC scholarships, missioning, advertising strategy, marketing, camps and on-campus training, the Junior High School Program and ROTC Nursing.

2. Meeting of the Advisory Committee is open to the public. Due to space limitations, attendance may be limited to those persons who have notified the Advisory Committee Management Office in writing at least five days prior to the meeting of their intent to attend the 20 April 1996 meeting.

3. Any members of the public may file a written statement with the Committee before, during or after the meeting. To the extent that time permits, the Committee chairman may allow public presentations of oral statements at the meeting.

4. All communications regarding this Advisory Committee should be directed to the above address.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–6810 Filed 3–20–96; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Air Warfare Center, Aircraft Division, Warminster, PA

SUMMARY: This Notice provides information regarding the redevelopment authority that has been established to plan the reuse of the Naval Air Warfare Center, Aircraft Division, Warminster, Pennsylvania, and the surplus property that is located at that base closure site.

FOR FURTHER INFORMATION CONTACT: For further general information, contact John J. Kane, Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474, or Marian E. DiGiamarino, Special Assistant for Real Estate, Base Closure Team, Northern Division, Naval Facilities Engineering Command, Lester, PA 19113–2090, telephone (610) 595–0762. For more detailed information regarding particular properties identified in this Notice (i.e. acreage, floorplan, sanitary facilities, exact street address, etc.), contact Helen McCabe, Realty Specialist, Base Closure Team, Northern Division, Naval Facilities Engineering Command, Lester, PA 19113–2090, telephone (610) 595–0549.

SUPPLEMENTARY INFORMATION: In 1991, the Naval Air Warfare Center, Aircraft Division, Warminster, Pennsylvania, was designated for realignment pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. In 1995 this designation was revised to reflect complete closure. Pursuant to this revised designation, on 28 September 1995, the remaining land and facilities at this installation were declared excess to the Department of Navy and made available for use by other federal public agencies. No interest has been expressed.

Notice of Surplus Property

Pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the redevelopment authority for and surplus property at the Naval Air Warfare Center, Aircraft Division, Warminster, Pennsylvania, is published in the Federal Register.

Redevelopment Authority

The redevelopment authority for the Naval Air Warfare Center, Aircraft Division, Warminster, Pennsylvania, for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the Federal Lands Reuse Authority of Bucks County (FLRA–BC), chaired by Mr. Robert Finley. A cross section of community interests is represented on the Reuse Authority. For further information contact Mr. Steven W. Rockwell, Executive Director, Federal Lands Reuse Authority of Bucks County, P.O. Box 3049, Warminster, PA 18974, telephone (215) 957–2310, facsimile (215) 957–2322.

Surplus Property Descriptions

The following is a listing of the additional land and facilities at the Naval Air Warfare Center, Aircraft Division, Warminster, Pennsylvania including the Oreland Open Water Test Facility, Oreland, PA, an off-site component, that are surplus to the federal government.

Land

Approximately 53 acres of improved and unimproved fee simple land at the Naval Air Warfare Center, Aircraft Division, Warminster, Pennsylvania (including its off-site component). In general, all areas will be available upon the closure of the Air Warfare Center, anticipated for March 1997.

Buildings

The following is a summary of the facilities located on the above described land which will be available when the Center closes in March 1997, unless otherwise indicated. Property numbers are available on request.

Main Base

Biological lab facilities (3 structures); Comments: Approx. 8,938 square feet;—Communications systems lab facility (5 structures); Comments: Approx. 28,947 square feet;—Community research lab facilities (9 structures); Comments: Approx. 75,163 square feet;—Fire/rescue facility (1 structure); Comments: Approx. 13,139 square feet;—Gate/entry facility (2 structures); Comments: Approx. 246 square feet;—Minibuoy test facility (1 structure); Comments:

Approx. 40 square feet;—Miscellaneous facilities; Comments: Measuring systems vary (TACAMO aprons, fencing, etc.);—Paved drive/plant area; Comments: measuring systems vary;—Pavements/grounds; Comments: Approx. 2,643 square feet (parking, sidewalks, roads, etc.);—Primary substation; Comments: Measuring systems vary;—Public works shop and maintenance storage facilities (6 structures); Comments: Approx. 4716 square feet;—Refuel vehicle facility (2 structures); Comments: Approx. 1,120 square feet;—Research, development, test & evaluation storage lab facility (1 structure); Comments: Approx. 577 square feet;—Sewage treatment facility (2 structures); Comments: Approx. 2,543 square feet;—Sonobuoy Accelerator (1 structure); Comments: Approx. 40 square feet;—Substation #2A; Comments: Measuring systems vary;—Substation #4 facility (1 structure); Comments: Approx. 626 square feet;—Switch/substation (2 structures); Comments: Approx. 3,507 square feet;—Underwater lab (6 structures); Comments: Approx 58,818 square feet;—Utilities; Comments: Measuring systems vary (water, electric distribution lines, fire protection, drainage ditch, sanitary sewer);—Well-potable water #10; Comments: Approx 58,818 square feet.

Off-Site Component

Instrument facility (1 structure); Comments: Approx. 253 square feet;—Miscellaneous facilities; Comments: Measuring systems vary (loading dock and pad, fixed crane, flag pole, fencing, electric line, parking area, etc.)

Expressions of Interest

Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Air Warfare Center, Aircraft Division, Warminster, Pennsylvania, shall submit to said redevelopment authority Federal Lands Reuse Authority of Bucks County (FLRA-BC) a notice of interest, of such governments, representatives and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant paragraphs 7(C) of said Section 2905(b), the redevelopment authority shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Bucks and Montgomery Counties, Pennsylvania, the date by which expressions of interest must be submitted.

Dated: March 12, 1996.

M. A. Waters,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–6817 Filed 3–20–96; 8:45 am]

BILLING CODE 3810–FFP

DEPARTMENT OF ENERGY

Sale of Naval Petroleum Reserve No. 1; Intent To Prepare a Supplemental Environmental Impact Statement and Conduct Public Scoping Meeting

AGENCY: Office of Naval Petroleum and Oil Shale Reserves, Energy.

ACTION: Notice of intent to prepare a Supplemental Environmental Impact Statement.

SUMMARY: Title XXXIV, Subtitle B, of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106) directs the Secretary of Energy to sell the Federal government's interests in Naval Petroleum Reserve Numbered 1 (NPR–1, also called ''Elk Hills''). In 1993, the Department of Energy (DOE) published a supplement (DOE/EIS–0158) to a 1979 Environmental Impact Statement (EIS) which analyzed the impacts of oil and gas production at NPR–1 under continued Federal ownership and operation. Sale of Federal ownership was not analyzed in the 1993 Supplemental EIS. DOE has determined that the sale required by Public Law 104–106 constitutes a major Federal action which may have significant impact upon the environment within the meaning of the National Environmental Policy Act (NEPA). For this reason, DOE intends to prepare a supplement to the 1993 Supplemental EIS to cover foreseeable impacts from the sale and reasonable alternatives.

DATES: DOE invites interested agencies, organizations, and members of the public to submit comments or suggestions to assist in identifying significant environmental issues and determining the appropriate scope of the Supplemental EIS. Comments may be submitted by mail or presented at a scoping meeting to be held at Bakersfield, California, on the date and at the time indicated below.

Tuesday, April 16, 1996

1:00 P.M. to 3:00 P.M., and 7:00 P.M. to 9:00 P.M.

Red Lion Hotel, 3100 Camino del Rio Court, Bakersfield, California

Written comments postmarked by May 6, 1996, will be considered in the preparation of the Draft Supplemental EIS. Comments postmarked after that date will be considered to the maximum extent practicable. Requests to speak at the meeting should be received by Anthony J. Como, at the address indicated below, on or before April 9, 1996. In addition, requests to speak may be submitted to Mr. Como via facsimile at (202) 586–6050 or a message may be left on our toll-free number at 1–888–NPREIS1 (677–3471). Requests to speak may also be made at the time of registration for the meeting. However, persons who submitted advance requests to speak by April 9, 1996, will be given priority if time should become limited during the meeting.

ADDRESSES: Written comments or suggestions on the scope of the supplemental EIS, and requests to speak at the scoping meeting, may be submitted to: Anthony J. Como, Document Manager (FE–52), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585–0350, Phone: 202–586–5935, Telefax: 202–586–6050.

Envelopes should be labeled ''Scoping for Sale EIS''.

FOR FURTHER INFORMATION CONTACT: For general information on the DOE NEPA review process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy, and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Ave., S.W., Washington, D.C. 20585–0119, Phone: 202–586–4600, Telefax: 202–586–7031, Toll Free: (800) 472–2756.

For information on the sale of NPR–1 required by Pub. L. 104–106, contact: John Bartholomew, Divestment Administrator (FE–41), U.S. Department of Energy, 1000 Independence Ave., S.W., Washington, D.C. 20585–0340, Phone: 202–586–4248, Telefax: 202–586–0835.

SUPPLEMENTARY INFORMATION: NPR–1 comprises 47,985 acres and is located about 35 miles west of Bakersfield in Kern County, California. It was created by an Executive Order issued by President Taft in 1912 to provide an emergency source of liquid fuels for the military. Except for brief periods of production in the 1920's and during World War II, Elk Hills was maintained in an essentially undeveloped status until the 1973–74 oil embargo demonstrated the Nation's vulnerability to oil supply interruptions. As a result of the embargo, the Congress passed the Naval Petroleum Reserves Production

Act of 1976 (Pub. L. 94–258), which authorized and directed that the Reserve be explored and developed to its full economic and productive potential. Public Law 94–258 required that Elk Hills be produced for six years at the ''maximum efficient rate'' consistent with sound engineering practices. The law also provided the President discretionary authority to extend production subsequently, in increments of up to three years each, if continued production is found to be in the national interest. Such findings have been made and production is presently authorized through April 5, 1997.

Elk Hills is currently producing approximately 61,000 barrels per day of oil, 345 million cubic feet per day of natural gas, and 500 thousand gallons per day of natural gas liquids. All of the government's share of production (approximately 47,000 barrels per day of oil, 40 million cubic feet per day of natural gas, and 225 thousand gallons per day of natural gas liquids) is sold on the open market via competitive bids, and all revenues from these sales are deposited into the Miscellaneous Receipts Account in the U.S. Treasury. Since the opening of Elk Hills to full development in 1976, revenues through Fiscal Year 1995 from the sale of hydrocarbon products produced from the field have totaled almost $13.0 billion, against total costs of $3.0 billion.

Elk Hills consists of about 67 sections of land, approximately 78 percent of which is owned by the Federal government and 22 percent by Chevron U.S.A. These lands have been developed and operated as a unit pursuant to a Unit Plan Contract (UPC) entered into in 1944. Under the UPC, the Federal government has the exclusive control, subject to the UPC, over the exploration, development, and operation of NPR–1.

To meet President Clinton's call to reinvent government, DOE evaluated the Federal government's role at Elk Hills in context with current national priorities and needs. The Department recognized that this facility consistently earns substantial revenues for the Treasury. However, the Department decided that continued involvement by the Federal government in what is essentially a commercial enterprise was inappropriate, and recommended to the Congress that Elk Hills be privatized. Congress agreed that privatization was the appropriate course of action and included language in the Defense Authorization Act for Fiscal Year 1996 authorizing the sale.

Preliminary Identification of Alternatives

One of the major purposes of an EIS is to define and analyze the reasonable alternatives to the proposed action, and the environmental impacts to be expected from each alternative. As background for public comments and suggestions concerning reasonable alternatives to be considered, DOE has tentatively identified two alternatives, as well as a reference case, to be analyzed in the Supplemental EIS:

1. Continued Federal Ownership and Operation Under Public Law 104–106 (''No Action'')

Public Law 104–106 establishes certain conditions that must be met for the sale of the Federal government's ownership interests in Elk Hills to be completed. For example, under section 3414(b), the Secretary of Energy may suspend the sale if the Secretary and the Director of the Office of Management and Budget jointly determine that the sale is proceeding in a manner inconsistent with achievement of a sale price that reflects the full value of Elk Hills, or that a course of action other than immediate sale is in the best interests of the United States. The ''No Action'' alternative, therefore, contemplates that sale does not take place for some reason, and that Federal ownership and operation of NPR–1 will continue.

The environmental and socioeconomic impacts of continued Federal ownership and operation of Elk Hills were analyzed in the 1993 Supplemental EIS (DOE/EIS–0158). Those analyses assumed that the petroleum engineering strategy that was being used in 1993 to guide the overall development of Elk Hills (''maximum efficient rate'' production, as required by the Naval Petroleum Reserves Production Act of 1976), would continue to be used in the future. However, section 3412(h) of the Defense Authorization Act for Fiscal Year 1996, which authorized the sale of Elk Hills, also revised the basic operating strategy for that oil field. Section 3412(h) requires that, until the sale of Elk Hills is completed, DOE must produce the field not at the ''maximum efficient rate,'' but rather ''at a maximum daily oil or gas rate * * * which will permit maximum economic development * * * consistent with sound oil field engineering practices * * *'' It is possible that development of Elk Hills under this new strategy may proceed at a different pace, and may consist of a different mix of facility development and operational projects, than was analyzed in the 1993 Supplemental EIS. DOE will have a more detailed, but still preliminary, description of activities under the ''maximum economic development'' strategy available at the scoping meeting. However, the Department is seeking public input on this issue and encourages suggestions and comments.

2. Sale of the Federal Government's Ownership Interests (''Proposed Action'')

In this scenario, all Federal ownership interests in Elk Hills would be sold; DOE would no longer have authority or responsibility for the management of Elk Hills, and all development and production decisions would be vested solely with the private sector owner(s). This is the outcome sought by the legislation and is therefore the proposed action for the Supplemental EIS. Private owners of Elk Hills will not be bound by any Federal statutory requirements regarding development philosophies, as was DOE with the ''maximum efficient rate'' requirement in Public Law 94–258. This may result in the Elk Hills field taking a different course in the future, with different levels of development activity and different types of projects than under continued government ownership. DOE will have a preliminary description of a number of possible development scenarios for NPR–1 under private ownership available for presentation at the scoping meeting. However, the Department is seeking public input on this issue and encourages suggestions and comments.

3. Reference Case

In order to understand the changes in environmental impacts which Public Law 104–106 could cause at NPR–1, the Supplemental EIS will describe a ''reference case'' scenario comprised of the present conditions at the reserve. This scenario will be based on the 1993 Supplemental EIS and actual operational data obtained since that document was published. The reference case will provide a basis of comparison for evaluating the required change from the ''maximum efficient rate'' operation strategy to ''maximum economic development.'' DOE believes at this time that the reference case will be similar to the No Action alternative in many respects.

Preliminary Identification of Environmental Issues

The purpose of this notice is to solicit comments and suggestions for consideration in preparation of the EIS Supplement. As background for public comment, it is useful to list in this

document those environmental issues which have been tentatively identified for analysis. This list is not intended to be all-inclusive or to imply any predetermination of impacts. Following is a preliminary list of issues that may require analysis in the NPR–1 Supplemental EIS.

In addition to seeking comments from the public on this preliminary list of potential impacts, DOE is also soliciting comments on how environmental compliance activities conducted by a private owner of Elk Hills may differ from compliance activities conducted at the site by the Federal government, as described in the 1993 Supplemental EIS and other documents related to environmental compliance, such as the 1995 Biological Opinion issued by the U.S. Fish and Wildlife Service under Section 7 of the Endangered Species Act.

1. Air Quality: Release of air pollutants from the Reserve would probably occur at about the same levels as projected in the 1993 Supplemental EIS under Alternative 1, although it is possible that some increases could also occur. Implementation of Alternative 2 could result in the continued release of gaseous and particulate residuals from the Reserve, and possibly increase the level of releases.

2. Impacts to Wildlife: Operation under either of the alternatives would continue to produce some potentially adverse impacts to some wildlife inhabiting the Reserve. Of particular concern would be the continued or expanded disturbance of habitat, and other related interactions, involving the six Federal- and state-listed endangered species known to exist on the NPR–1 site (the San Joaquin kit fox, giant kangaroo rat, blunt-nosed leopard lizard, Tipton kangaroo rat, Hoover's wooly-star, and San Joaquin antelope squirrel).

3. Socioeconomic Effects: Sale of NPR–1 to a private owner could result in a combination of positive and negative impacts in the local area, depending on possible changes in state and local taxation of the new privately-owned Reserve lands and related revenues, and in the alteration of existing Federal purchasing and contracting practices by a private sector owner. It is possible that overall staffing levels at Elk Hills will be lower under a private owner than they are with Federal ownership and operation. Hence, adoption of Alternative 2 by DOE could potentially have adverse impacts in a number of Kern County communities, due to direct loss of jobs by NPR–1 workers, indirect economic impacts on businesses supported in whole or in part by Federal operation of the Reserve, and by community loss of other revenues. Continued Federal ownership under Alternative 1 could maintain socioeconomic benefits for the area through the interaction of the substantial employment, subcontracting, and supply requirements of the Reserve with the local economy and residents.

4. Water Resources: Some concern exists regarding the potential for additional impacts to groundwater resources near the Reserve as a result of continued and possibly expanded reinjection of wastewater and disposal of other production wastes onsite. This concern is associated with Alternatives 1 and 2.

5. Cumulative Impacts: NEPA requires that the EIS evaluate the potential cumulative effects of the various alternatives in relation to the impacts of past, present, and reasonably foreseeable future development (of any kind), both on- and offsite. Cumulative impacts will be evaluated within the Supplemental EIS for all important issues, e.g., air quality, wildlife species, and socioeconomic conditions in nearby areas.

Scoping

The above preliminary lists of major environmental issues and reasonable alternatives are not meant to be exhaustive or final. For instance, even though some potential environmental impact areas, such as cultural resources, land use, and recreation, are not specified above as major issues, they will be evaluated as part of the NEPA analysis and will be discussed in the Supplemental EIS. DOE identified the reasonable alternatives and environmental issues listed above based on its experience with the major issues that have been raised in previous NEPA compliance activities for Elk Hills. DOE considers the scoping process to be open and dynamic in the sense that alternatives other than those given above may warrant examination, and new issues may be identified and evaluated. Interested parties are invited to participate in the scoping process both to refine the preliminary alternatives and environmental issues to be analyzed in depth, and to eliminate from detailed study those alternatives and environmental issues that are not significant or pertinent.

The scoping process will involve all interested agencies (Federal, state, county, and local), groups, and members of the public. Comments are invited on both the alternatives and the issues to be considered in the Supplemental EIS. A public scoping meeting will be held at the location, date, and time indicated above. This scoping meeting will be informal and conducted as a discussion between attendees and DOE. The DOE presiding officer will establish only those procedures needed to ensure that everyone who wishes to speak has a chance to do so and that all issues and comments raised are clearly understood by DOE. Depending upon the number of persons wishing to speak, DOE may allow longer times for representatives of organizations. Consequently, persons wishing to speak on behalf of an organization should identify that organization in their request to speak. Persons who have not submitted a request to speak in advance may register to speak at the scoping meeting. However, advance requests to speak are encouraged. Both oral and written comments will be considered and will be given equal weight by DOE.

A complete transcript of the public scoping meeting will be retained by DOE and made available for inspection during business hours, Monday through Friday, at the Department of Energy Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585, and at the Department of Energy Oakland Operations Office, 1301 Clay Street, Oakland, CA 94612–5208. Additional copies of the public scoping meeting transcripts will also be made available during normal business hours at the following locations:

Beale Memorial Library— Main Branch, 1315 Truxtun Avenue, Bakersfield, California

Taft Branch—Kern County Library, 27 Emmons Park Drive, Taft, California

A notice of locations where documents will be available will be published in the Federal Register at the time of announcement of the availability of the Draft Supplemental EIS. In addition, copies of the public scoping meeting transcripts will be made available for purchase.

Those interested parties who do not wish to submit comments or suggestions at this time, but who would like to receive a copy of the Draft Supplemental EIS, should notify Anthony J. Como at the address given in the address section of this notice.

Dated at Washington, DC, this 13th day of March, 1996, for the United States Department of Energy.

Peter N. Brush,

Principal Deputy Assistant Secretary Environment, Safety and Health.

[FR Doc. 96–6837 Filed 3–20–96; 8:45 am]

BILLING CODE 6450–01–P

Draft Environmental Impact Statement for Completion of the West Valley Demonstration Project and Closure or Long-Term Management of Facilities at the Western New York Nuclear Service Center

AGENCY: United States Department of Energy.

ACTION: Notice of availability and notice of wetlands involvement.

SUMMARY: The U.S. Department of Energy (DOE) and the New York State Energy Research and Development Authority (NYSERDA) announce the availability for public review and comment of the Draft Environmental Impact Statement (EIS) for Completion of the West Valley Demonstration Project (Project) and Closure or Long-Term Management of Facilities at the Western New York Nuclear Service Center (Center). DOE also gives public notice that the alternatives analyzed in the EIS include proposed actions that would occur in wetlands. The EIS evaluates alternatives for integrated sitewide actions to complete DOE decontamination and decommissioning activities and provide for NYSERDA's closure or long-term management of facilities at the Center. This joint EIS supports the selection of the site management strategy and will assist NYSERDA and DOE in making decisions for future site closure or management activities. DOE and NYSERDA will identify the selected site management strategy in a National Environmental Policy Act (NEPA) Record of Decision and in State Environmental Quality Review Act (SEQRA) Findings, respectively. If necessary, additional NEPA or SEQRA documents will be prepared for DOE and NYSERDA actions not specifically addressed in this document.

DATES: The comment period on the Draft EIS will continue until September 22, 1996. Comments postmarked after that date will be considered to the extent practicable. Public meetings will be held at the locations and dates listed in the supplementary information section of this notice.

ADDRESSES: Requests for information about, and copies of, the Draft EIS should be directed to the Community Relations Department of the West Valley Demonstration Project, P.O. Box 191, West Valley, NY 14171–0191, or by calling (800) 633–5280 or (716) 942–2152.

Written comments on the Draft EIS should be mailed to the following address:

Draft EIS, Community Relations Dept./MS–A, West Valley Demonstration Project, P.O. Box 191, West Valley, New York 14171. Fax: (716) 942–4703, Internet: http://freenet.buffalo.edu/wvdp/eisform.htp

For general information on the DOE NEPA process, call (800) 472–2756 to leave a message, or contact:

Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0119, (202) 586–4600

For general information on the New York State Environmental Quality Review Act (SEQRA) process, call (518) 457–2224 to leave a message or contact:

Jack Nasca, Regulatory Services, New York State Department of Environmental Conservation, 50 Wolf Road, Room 538, Albany, NY 12233–1750

Availability of the Draft EIS: Copies of the Draft EIS have been distributed to federal, state, tribal and local officials, as well as agencies, organizations and individuals who may be interested or affected. Copies of the Draft EIS are also available for public review at the locations listed at the end of this Notice.

SUPPLEMENTARY INFORMATION:

Background

On December 27, 1988, DOE issued a Notice of Intent (53 FR 53052) to prepare the Environmental Impact Statement for Completion of the West Valley Demonstration Project and Closure or Long-Term Management of Facilities at the Western New York Nuclear Service Center. The Notice of Intent stated that the EIS would evaluate alternatives for completing the Project and closure or long-term management of facilities at the Center which is located near Buffalo, New York. The public comment period on the Notice of Intent extended from December 27, 1988 to February 23, 1989, with two public scoping meetings.

DOE issued an Implementation Plan in March 1995 that recorded the results of the scoping process.

The Center is the site of a former spent nuclear fuel reprocessing facility. NYSERDA holds title to the site on behalf of the people of the State of New York. The site includes the process building and associated facilities, waste storage facilities, two radioactive waste disposal areas, and tanks containing liquid high-level radioactive waste from past reprocessing operations. The West Valley Demonstration Project is a joint federal-state cleanup under which DOE, in cooperation with NYSERDA, will solidify the high-level radioactive waste, transport the solidified waste for disposal at an appropriate federal repository, dispose of the low-level and transuranic waste produced by the solidification of the high-level waste, and decontaminate and decommission all facilities used in solidifying the high-level waste. In 1982, a Final EIS was issued by DOE concerning long-term management of the liquid high-level wastes. On the basis of that earlier EIS, DOE decided to concentrate, chemically treat, and convert the liquid high-level wastes to a solid terminal waste form suitable for transportation offsite and eventual disposal in a federal geologic repository.

The current EIS evaluates alternatives for integrated sitewide actions to complete DOE decontamination and decommissioning activities and provide for NYSERDA's closure or long-term management of facilities at the Center. This EIS evaluates the treatment, storage, and disposal of high-level, low-level, low-level mixed, hazardous, and industrial waste and contaminated soil. This EIS is being prepared in accordance with the requirements of NEPA of 1969; with Council on Environmental Quality regulations implementing NEPA (40 CFR Parts 1500–1508), and DOE NEPA Implementing Procedures (10 CFR Part 1021); and with the New York State Environmental Quality Review Act (SEQRA). This joint EIS provides environmental information to support the selection of the site management strategy and will assist NYSERDA and DOE in making decisions for future site closure or management activities. The Nuclear Regulatory Commission is a cooperating agency in the preparation of this EIS. DOE and NYSERDA will identify the selected site management strategy in a NEPA Record of Decision and in SEQRA Findings, respectively. If necessary, additional NEPA or SEQRA documents will be prepared for DOE and NYSERDA actions not specifically addressed in this document.

Alternatives Considered

Five alternatives for Project completion and closure or long-term management of the facilities at the Center are analyzed in this EIS. These five alternatives were identified after considering comments received during the scoping process. The five alternatives are:

Alternative I: Removal and Release to Allow Unrestricted Use. Alternative I is the removal of existing facilities including buried waste so there are minimal remnants of nuclear operations. All waste would be disposed of offsite.

Alternative II: Removal, On-Premises Waste Storage, and Partial Release to Allow Unrestricted Use. Alternative II is the removal of existing facilities including buried waste so there are minimal remnants of nuclear operations, with the exception of on-premises storage of high-level, low-level, and low-level mixed waste. Hazardous and industrial waste would be disposed of offsite.

Alternative III: In-Place Stabilization and On-Premises Low-Level Waste Disposal. Alternative III is the in-place stabilization of contaminated structures and buried waste. Uncontaminated structures would be removed. Low-level waste would be disposed of onsite. All other waste would be disposed of offsite.

Alternative IV: No Action: Monitoring and Maintenance. Alternative IV is the management of the site in its current configuration. There would be long-term monitoring and maintenance. Only hazardous waste would be disposed of offsite.

Alternative V: Discontinue Operations. Alternative V is the discontinuation of operations; the site would be left in its current configuration. No closure actions would be taken. All waste would be left onsite.

Alternative IV (No Action: Monitoring and Maintenance) is required by NEPA and SEQRA regulations to be considered in order to establish a baseline for comparison with the environmental effects of the ''action'' alternatives. Alternatives II (On-Premises Storage) and V (Discontinue Operations) were evaluated in the EIS in response to comments received during the scoping process. Although Alternative V is not considered a reasonable alternative by either DOE or NYSERDA, it provides an environmental baseline for evaluating impacts. The long-term performance assessment (an analysis of the effects that contaminated facilities would have on human health and the environment over the long term) of Alternative V gives an understanding of the long-term public hazard and contribution of natural processes, such as surface water flow or erosion, to that hazard. Table S–1 in the EIS summarizes the actions for each alternative, including the disposition of newly generated and stored waste. Neither DOE nor NYSERDA has identified a preferred alternative.

The alternatives include proposed actions that would occur in wetlands. Pursuant to 10 CFR Part 1022, the Draft EIS includes an assessment of the potential impacts to wetlands .

Invitation to Comment

The public is invited to submit written and oral comments on any or all portions of the Draft EIS. Public information sessions on the Draft EIS will be held in the Western New York area in April 1996, including sessions planned specifically to share EIS information with members of the Seneca Nation of Indians. The dates, times and locations of the public information sessions are as follows:

Tuesday, April 23, 1996, 1:00–9:00 p.m., Seneca Nation Reservation, Irving, NY

Wednesday, April 24, 1996, 1:00–9:00 p.m., McKinley Park Inn, McKinley Parkway, Hamburg, NY

Thursday, April 25, 1996, 1:00–9:00 p.m., Seneca Nation Reservation, Salamanca, NY

Friday, April 26, 1996, 1:00–9:00 p.m., Ashford Office Complex, Route 219, Ashford, NY

These sessions will also be announced through public notices in area newspapers, press releases, Internet notifications and through Seneca Nation advertising media. These sessions will be conducted as ''poster presentations'' with the DOE, NYSERDA, and EIS contractor personnel available to explain and discuss topics and issues related to the Draft EIS.

In addition, DOE and NYSERDA are planning to hold one public hearing, on August 6, 1996, to receive oral and written comments on the Draft EIS. Further information regarding the EIS will be available by calling (800) 633–5280 (toll free), or, for those who receive a copy of the EIS, by contacting the personnel identified in the Summary of the Draft EIS.

Written comments on the Draft EIS will be accepted until September 22, 1996, at the New York address at West Valley (provided above). DOE and NYSERDA will consider these public comments in preparing the Final EIS.

Persons who wish to speak at the public hearing are asked to register in advance by calling the following toll-free number: (800) 633–5280. Requests to speak that have not been submitted before the hearing will be handled in the order in which they are received. DOE's and NYSERDA's responses to comments received during the public hearing or in writing will be included in the Final EIS.

WVDP Public Reading Rooms

The following is a list of public reading rooms where the Draft EIS and supporting technical documents are available:

Central Library, Lafayette Square, Buffalo, NY 14203, Phone: (716) 858–7098

Concord Hulbert Library, 18 Chapel Street, Springville, NY 14141, Phone: (716) 592–7742

Olean Public Library, 134 North 2nd Street, Olean, NY 14760, Phone: (716) 372–0200

West Valley Central School Library, West Valley, NY 14171, Phone: (716) 942–3293

Ashford Office Complex, 9060 Route 219, West Valley, NY 14171 Phone: (716) 942–4555

Issued in Washington, D.C., March 18, 1996.

Stephen Cowan,

Deputy Assistant Secretary for Waste Management.

[FR Doc. 96–6836 Filed 3–20–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Floodplain and Wetland Involvement for the Ventron Site, Essex County, Massachusetts

AGENCY: Former Sites Restoration Division, Department of Energy (DOE).

ACTION: Notice of floodplain and wetland involvement.

SUMMARY: DOE proposes to remediate sediment and soil containing elevated levels of uranium-238 from a floodplain and wetland, a floodplain and wetland buffer zone, and from the Massachusetts coastal zone in Essex County, Massachusetts. In accordance with 10 CFR 1022, DOE has prepared a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetland resources.

DATES: Comments are due to the address below no later than April 5, 1996.

FOR FURTHER INFORMATION ON THIS PROPOSED ACTION OR TO COMMENT ON THE ACTION, CONTACT: Mr. Jim Kopotic, Ventron Site Manager, Former Sites Restoration Division, U.S. Department of Energy, P.O. Box 2001, Oak Ridge, TN 37831–8541, Phone: (423) 576–9441, FAX: (423) 576–0956.

FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT: Carol Borgstrom, Director, Office of NEPA Oversight, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: Ventron is a privately-owned site that processed natural uranium oxide, salts, and metal between 1942 and 1948 for the Manhattan Engineer District (MED) and later for the Atomic Energy Commission (AEC). No enriched or depleted uranium was used at the site. Prior to and subsequent to MED- and AEC-related activities at the site, other radioactive elements including thorium compounds and hazardous chemicals were processed at the Ventron site in work unrelated to MED, AEC, or DOE contracts. DOE has authority at the site for remediation of media containing elevated levels of natural uranium (uranium-238). DOE is remediating the

Ventron site in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The Ventron site is currently an inactive facility and is being cleaned up by the current owner, Morton International, in a separate but related action.

Risks from exposure to radioactive materials at the Ventron site for future workers and residents at the site exceed DOE's public dose limit (100 mrem/yr), thereby meeting DOE's criteria for conducting removal actions to prevent potential future exposures to nearby humans under the no-action alternative. Although sediment and soil with elevated levels of uranium-238 at the Ventron site pose no immediate threats to human or ecological health, the remediation of the site could proceed to prevent radiation exposure to workers involved in Morton's remedial activities.

The implementation of the remedial action alternatives at the Ventron site would involve activity in a floodplain and a tidal wetland, a floodplain and wetland buffer zone, and the Massachusetts coastal zone. In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR 1022), DOE will prepare a floodplain and wetland assessment for this proposed DOE action. DOE will evaluate remedial options affecting two media at the site: harbor sediment and on-site soil and furnace ash. Remedial action for the affected harbor sediment may include: no action, or complete removal of sediment containing uranium levels above DOE guidelines. Remedial action for on-site soil and furnace ash may include: no action or, complete removal of soil and furnace ash containing uranium levels above DOE guidelines. Access to affected sediment and soil may require decontamination and demolition of structures in the floodplain and wetland buffer zone and Massachusetts coastal zone. DOE would temporarily store excavated material onsite before transport offsite to an approved, licensed waste disposal facility. A floodplain and wetlands assessment that incorporates the values of the National Environmental Policy Act will be included in the engineering evaluation and cost analysis being prepared for the proposed project. Upon completion and approval of the assessment DOE will publish a floodplain Statement of Findings in the Federal Register that describes the proposed action and measures DOE would implement to prevent environmental damage to floodplain resources at the Ventron site.

Issued in Oak Ridge, Tennessee on March 8, 1996.

James L. Elmore,

Alternate NEPA Compliance Officer.

[FR Doc. 96–6838 Filed 3–20–96; 8:45 am]

BILLING CODE 6450–01–P

Floodplain Statement of Findings For West Tributary Surface Water Monitoring Improvements

AGENCY: Office of Environmental Management, Department of Energy (DOE).

ACTION: Floodplain statement of findings.

SUMMARY: This Floodplain Statement of Findings for the West Tributary Surface Water Monitoring Improvements Project has been prepared in accordance with 10 CFR Part 1022. DOE proposes to replace an existing V-notched, contracted, weir that is located within the 100-year floodplain of White Oak Creek in Roane County, Tennessee with a complex-shaped critical flow flume. A Floodplain Assessment (available from the Oak Ridge address below) describing the potential effects of the action and alternatives to avoid or minimize potential harm to or within the affected floodplain was prepared. DOE will allow 15 days of public review after publication of this Statement of Findings before implementing the proposed action.

FOR FURTHER INFORMATION CONTACT: Bryan Westich, Waste Management Technology Development Division, U.S. Department of Energy, 3 Main Street, Oak Ridge, Tennessee 37830, Telephone (615) 241–2160, FAX (615) 576–5333.

FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS CONTACT: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: This is a Floodplain Statement of Findings for the West Tributary Surface Water Monitoring Improvements Project prepared in accordance with 10 CFR Part 1022. A Notice of Involvement for the proposed action was published in the Federal Register on October 4, 1993. This action is part of the Surface Water Monitoring Program at the Oak Ridge National Laboratory (ORNL) to enhance the accuracy of flow measurement and contaminant mass flux monitoring by upgrading or replacing existing flow measurement structures or devices. One such flow measurement structure is located in a tributary (West Tributary) to White Oak Lake. The structure is also located within the 100-year floodplain of White Oak Creek. The site is located in an area that is not accessible to the general public.

DOE is proposing to replace an existing V-notched, contracted, weir with a complex-shaped critical flow flume which will facilitate a larger range of flow measurement. As part of this action it would be necessary to demolish the existing V-notched weir structure and recontour the streams side slopes and bed to accommodate the installation of the new flume. Stream flow would be diverted during demolition and construction activities.

Three alternatives were considered in addition to the proposed action. The first was the no-action alternative. This alternative would not meet the program objective for enhanced accuracy of stream flow measurement and contaminant mass flux monitoring. The second alternative would be the restoration or upgrading of the existing weir structure. This action would not result in a significant increase in measurable flow range and would not meet the program objectives. The third alternative would be to replace the weir with a commercially available H-flume in lieu of the critical flow flume. The use of an H-flume would result in a greater upstream water depth to accommodate the desired flow range. Additional topographic contouring would be required in the area of the H-flume. Therefore the use of the H-flume would be less practical than the use of the critical flow flume. There is no practicable alternative to the location of this action in the floodplain.

The Floodplain Assessment concluded that the replacement of the V-notched weir with the critical flow flume would have no significant effect on the 100-year floodplains of White Oak Creek, White Oak Lake, or the West Tributary. Risks to individuals, property, or the environment will not be increased as a result of this action. DOE will allow 15 days of public review after publication of the Statement of Findings before implementing the proposed action.

Issued in Oak Ridge, Tennessee on March 11, 1996.

James L. Elmore,

Alternate NEPA Compliance Officer.

[FR Doc. 96–6839 Filed 3–20–96; 8:45 am]

BILLING CODE 6450–01–P

Morgantown Energy Technology Center; Climate Change Fuel Cell Program

AGENCY: Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Solicitation for financial assistance applications.

SUMMARY: In the Defense Appropriations Conference Report, dated September 26, 1994, Congress agreed to provide funding to the Department of Defense (DoD) for a competitive, cost-shared, near-term, Climate Change Fuel Cell Program. The responsibility for procurement, program management, and contract administration for these funds has been delegated to the Department of Energy, Morgantown Energy Technology Center (METC). The objectives of the ''Climate Change Fuel Cell Program'' are to reduce greenhouse gas emissions through the efficient use of fossil fuels, to accelerate fuel cell commercialization for U.S. manufacturers, and to satisfy the DoD goals for the environment, readiness, and economy, through activities which would stimulate end-user applications. Successful offerors will demonstrate, through their applications, a commitment to purchase, install, operate, and maintain, fuel cell power plant(s) with a combined capacity rated between 100 and 3,000 kW. This project will culminate with a summary report after one year of power plant operation. Grants will be awarded consistent with the amounts defined in the Funding Availability section of this document.

DATES: Applications may be submitted at any time after the issuance date of this solicitation up to and including one year after the issue date. The issue date is the date on which this notice appears in the Federal Register. Applications must state an acceptance period of at least 120 days. Applications will be evaluated in at least two rounds based on the evaluation factors set forth herein. Selections for the first round will be made by July 30, 1996, and awards made by September 30, 1996. The second round of selections and awards will be made after September 30, 1996, contingent upon availability of appropriated funds.

SUPPLEMENTARY INFORMATION:

Identification Number, Authority for Issuance, and Title

a. DE–PS21–96MC33099.

b. The use of Financial Assistance is authorized by 10 CFR 600.

c. Title of Financial Assistance: ''Climate Change Fuel Cell Program.''

d. Type of award instrument: Grant.

e. Catalog of Federal Domestic Assistance: 81.089.

f. Expected Duration of Support: Thirty-six months.

g. Statutory Authority: Public Law 95–224 (as codified at 31 U.S.C. 6301–6306).

h. Qualification Requirements: An Applicant's chosen fuel cell power plant(s) must be substantially manufactured in the U.S. (i.e., at least 50 percent of the value of the components must be produced in the U.S. and the unit (a fuel cell power plant) must be assembled in the U.S.); and the unit must not have been delivered to the installation site prior to this solicitation. The applicant must be an energy service provider, utility, or end user and cannot be a fuel cell manufacturer or developer. The application must identify an installation site and contain proof of a signed contract, firm or contingent, for purchase of fuel cell power plant(s), dated no earlier than publication of the Congressional language authorizing this program (September 26, 1994). The proposed project must be between 100 and 3,000 kilowatts in size and must be operational (providing electric and/or thermal energy to an end user) within three calendar years after award.

Submission, Withdrawal, and Unsuccessful Applications

1. The Application/Information Package includes application forms to be submitted, the 1994 Conference Report language, and other information needed for preparation of applications. The Application/Information Package will be available on the Internet [http://www.metc.doe.gov/business/solicita.html] after March 27, 1996. If Internet access is not available, a 3.5'' diskette in WordPerfect, version 5.2. may be requested from the contract specialist referenced below by mail or by telecopy ((304) 285–4683). The contract specialist may also be reached by telephone at (304) 285–4086. The Application/Information Package may also be obtained from the DOE Business Communication Center at [john.bashista@hq.doe.gov].

2. Applications are to be submitted to the following address: U.S. Department of Energy, Morgantown Energy Technology Center, Attn: R. Diane Manilla, M.S. I07, 3610 Collins Ferry Road, Morgantown, WV 26505.

Mark the outside package of each application with the solicitation number: DE–PS21–96MC33099.

3. Applications may be withdrawn by the offeror at any time prior to award by written notice to the individual identified in item 2 above.

4. Unsuccessful applications will be retained by the receiving office and will not be returned to unsuccessful applicants. Unsuccessful applicants will be given an opportunity for a debriefing which will describe the evaluation process and discuss the major strengths and weaknesses found in their application.

Funding Availability

The amount of money available for awards through September 30, 1996, is approximately $15,000,000. Grant values will be $1,000/kW, provided that the grant shall not exceed a third of the total project costs (unit cost, delivery, installation, and one year of precommercial operation).

Evaluation Factors and Application Preparation Instructions

1. Evaluation Factors

Applications will be evaluated in accordance with the following criteria with priority given to power plants servicing DoD installations:

- *Firmness of Financial Commitment* Firmness of the applicant's proposed funding sources for the project as evidenced by the commitment of the organizations providing funding assistance to the program and the estimated contribution of each.
- *Site Information* Intended use of thermal and electrical energy, type of operation (grid connected or grid independent), Environmental, Safety and Health issues, construction/installation issues and arrangements, firmness of site selection (letter of intent from end user and installation site authority).
- *Project Plans and Schedule* Reasonableness and adequacy of project plans (schedules and milestones) as evidenced by the planned completion date for key milestones for the installation and operation of the fuel cell power plant.

2. Relative Importance of the Evaluation Criteria

The criteria are listed in descending order of importance. Criterion 1 is of greater importance than Criteria 2 and 3. Criterion 3 is of less importance than 1 and 2. Criterion 3 is approximately half the importance of Criterion 1. Criterion 2 is slightly less important than Criterion 1.

3. Cost Evaluation

The total project costs which include unit cost, delivery, installation, and one year of precommercial operation will be reviewed for reasonableness and cost realism.

4. Program Policy Factors

a. Descending priority will be given to those projects providing energy service to: DoD installations—U.S., DoD installations—foreign, non-DoD installations—U.S., and non-DoD installations—foreign.

b. It is desirable to select for award projects representing diverse fuel cell power plant sizes, applications, and locations.

5. Application Preparation Instructions

a. Applications must include:

(1) A listing of the organizations providing funding assistance to the program and the estimated contribution of each.

Note: Grant funds will not be dispursed until after the 8-hour test.

(2) Site Description/Installation Information consisting of intended use of thermal and electrical energy, type of operation (grid connected or grid independent), Environmental, Safety and Health issues, construction/installation issues and arrangements, firmness of site selection (letter of intent from end user and installation site authority).

(3) Planned completion date for key milestones for the installation and operation of the fuel cell power plant.

(4) Portions of the fuel cell purchase agreement indicating the product, delivery, price, date of purchase agreement and signatures of buyer and seller.

(5) Letters of intent to participate from the end user (if applicable) and installation site authority.

b. Applicants who include in their application business sensitive or proprietary data that they do not want disclosed to the public for any purpose or used by the Government except for evaluation purposes shall:

1. Mark the title page with the following legend: ''This application or quotation includes business sensitive or proprietary data that shall not be disclosed outside of the Government and shall not be duplicated, used, or disclosed—in whole or in part—for any purpose other than to evaluate this application or quotation. If, however, a grant is awarded to this applicant as a result of—or in connection with—the submission of this data, the government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting grant. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The business sensitive or proprietary data subject to this restriction are contained in pages (insert number or other identification of pages)''; and

2. Mark each page of data it wishes to restrict with the following legend: ''Use or disclosure of data contained on this page is subject to the restriction on the title page of this application or quotation.''

c. Each application will be submitted in an original and six copies to the address given in the summary section, above, designated as the delivery point for applications.

DOE Obligation for Application Preparation

DOE is under no obligation to reimburse the applicant for any costs associated with the preparation or submission of applications.

Application Review and Selection

1. Each application will be objectively reviewed on its own merit against the evaluation criteria stated in the solicitation. A two-step review process will be employed. The initial evaluation will be performed to determine if the application meets the qualification criteria stated in the solicitation. Applications passing the initial evaluation will be subject to a comprehensive evaluation.

2. Groups of applications will be reviewed and selected for award as often as practicable.

3. Selection of application(s) will be made in consideration of the evaluation criteria, program policy factors, and the availability of funds.

Application Evaluation and Award

DOE reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this solicitation.

James J. Grabulis,

Director, Acquisition and Assistance Division.

[FR Doc. 96–6841 Filed 3–20–96; 8:45 am]

BILLING CODE 6450–01–P

Morgantown Energy Technology Center; CRADA Opportunity Announcement

AGENCY: Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of CRADA opportunity announcement.

SUMMARY: The Morgantown Energy Technology Center (METC) is offering partnering opportunities with United States companies in the area of hot gas desulfurization for developers of transport reactor systems, system integrators, and developers of novel sorbents. The vehicle for the partnering is a Cooperative Research and Development Agreement (CRADA). CRADAs offer private sector partners the opportunity to share in outcomes of development activities and also offer the option for protection of CRADA-generated data. These agreements do require the partner to share in the cost and do not involve METC funding of the partner's activities.

The Utility Industry and METC agree that IGCC technologies being demonstrated under the CCT program will play a significant role in supplying U.S. electricity during the next century. As the markets for such plants expand to replace today's older plants and to supply demand for additional electricity, the sales of cost-effective, hot gas sulfur removal sorbents, and related process systems could be substantial. The proposed CRADA is expected to accelerate commercial availability of improved, lower-cost, hot gas desulfurization sorbents for transport reactors. By closely linking test planning, operation and analysis as performed by METC with sorbent preparation, and analysis as performed by the CRADA Participant; enhanced R&D effectiveness is achievable.

DATES: Proposals received by March 29, 1996, will be evaluated, in order of importance, for: a) monetary value of industry contribution; b) proposer qualifications; and c) merits of commercialization plan. Any or all proposals may be accepted or rejected as deemed to be in the best interest of the Government. Pending content of proposals received, negotiation with one or more Participant is planned immediately following proposal evaluation. The target date for completion of a negotiated draft agreement is April 12, 1996, such that a final agreement can be executed by May 30, 1996.

ADDRESSES: Parties interested in this CRADA opportunity are requested to submit a proposal by March 29, 1996. Additional information is available on METC's Internet Homepage at ''http://www.metc.doe.gov'' or by contacting Dr. Rodney J. Anderson, Technology Transfer Program Manager, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, 3610 Collins Ferry Road, Morgantown, WV 26507–0880; Telephone: (304) 285–4709.

SUPPLEMENTARY INFORMATION: A METC on-site facility—the Transport Reactor Facility—is being commissioned with testing operations to begin by mid-1996. This facility will operate with either simulated or actual gasifier coal gas at high pressure and high temperature to

test sulfur removal sorbents in transport-flow regimes. Test objectives are to qualify sorbents for demonstration in commercial-scale Clean Coal Technology (CCT) projects such as the Sierra Pacific Power Company, an Integrated Gasification Combined Cycle (IGCC) technology.

The test reactor is designed as a single pass system to explore various aspects of hot gas desulfurization in the transport regime. The reactor is constructed from 0.334-inch i.d. Incoloy 800 tubing with a nominal 28-foot reaction length. It operates at temperature up to 1500°F (816°C), pressures from 100–600 psig (0.7–4.1 MPa (ga)), a residence times from 2–10 seconds, solids feed rates from 0.5–10 lb/hr (0.23–4.54 kg/hr), gas feed rates from 200–1000 scfh (5.7–28.3 scmh). Preheated gases and solids mix in a nozzle at the bottom of the reactor. Reactant gas enters the nozzle concentrically and countercurrent to the solids flow to promote thorough mixing. The mixture reacts and flows upward in a transport flow regime through the reactor. Five zones of heaters line the vertical section of the reactor and provide temperature control. The reaction can be quenched at either of two vertical injection ports to allow variable reactant residence times. Quenching at the lower port gives a reaction length of 12 feet (3.67 meters) whereas quenching at the upper port provides a reaction length of 28 feet (8.6 meters). Reactor facility investment is approximately $4 million. Proposals require the Participant to provide a cost estimate and description of work scope that the Participant is proposing to perform, supply, and/or fund. The Participant may propose to compensate METC for work performed by METC, however METC cannot reimburse the Participant for work performed by the Participant. As a minimum, the Participant's contribution shall be: sorbent development and supply, and a portion of sorbent analytical work. Test operation shall be performed by METC personnel; however, Participant personnel may be present during testing and may perform most other test activities. Additionally, the Participant shall describe its qualifications for sorbent development and supply consistent with the CRADA objective and for the work scope proposed to be performed by the Participant. Qualifications for transport reactor design and commercial offering should be provided, if appropriate. Also, the Participant shall describe its long range plan for supplying projected quantities of hot gas desulfurization sorbent to the marketplace. Product pricing and performance parameters should be provided as a function of market projections. Elaborate proposals are not required nor expected. It is recommended that the proposal not exceed 25 pages.

James J. Grabulis,

Director, Acquisition & Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 96–6842 Filed 3–20–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP96–110–000]

Carnegie Interstate Pipeline Company; Notice of Changed Comment Periods to Technical Conference

March 15, 1996.

At the technical conference held on March 5, 1996, in the above-captioned proceeding comment periods were established for parties to respond to issues raised at the technical conference concerning the review of Carnegie Interstate Pipeline Company's (Carnegie) release of its unassigned Texas Eastern Transmission Corporation (Texas Eastern) capacity. One party has requested additional time to review data related to the filing before it files its initial comments. Accordingly, the comment periods are revised as follows: Initial comments are due by the close of business March 28, 1996; with reply comments due by the close of business April 15, 1996.

All comments should be filed with the Secretary's office and in accordance with the provisions of the Commission's Rule of Practice and Procedure. In particular, 18 FERC 385.2010 (Rule 2010) requires that you serve a copy of the comments to each person whose name appears on the official service list in this proceeding.

For additional information, please contact Bob Sheldon at (202) 208–2273.

Lois D. Cashell,

Secretary.

[FR Doc. 96–6766 Filed 3–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–88–000]

CNG Transmission Corporation; Notice of Technical Conference

March 15, 1996.

Take notice that a technical conference has been scheduled in the above-captioned proceeding for 10:00 a.m. on March 28, 1996, in Room 3M–2A, at the offices of the Federal energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The purpose of the conference is to discuss matters of interest and concern relating to CNG Transmission Corporation's proposal to abandon operational capacity in excess of 3.2 MMcf/day at the Johnsonburg M&R Station located in Elk County, Pennsylvania, and permission to install flow control devices necessary to ensure the desired level of operation of the facility.

All interested parties are invited to attend. For additional information, interested parties may call Philip J. Veres at (202) 208–0049.

Lois D. Cashell,

Secretary.

[FR Doc. 96–6772 Filed 3–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–245–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

March 15, 1996.

Take notice that on March 13, 1996, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP96–245–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install and operate a new delivery point, the MAPCO delivery point, located in Gage County, Nebraska under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern proposes to install and operate the MAPCO delivery point to accommodate natural gas deliveries to Mid-America Pipeline Company (Mid-America) under Northern's currently effective interruptible throughput service agreement. Northern states that Mid-America requests the proposed delivery point to provide fuel for its pumping station. The estimated volumes that would be delivered at the MAPCO delivery point are up to 984 MMBtu per day and 76,608 MMBtu on an annual basis. Northern estimates the cost to install the new delivery point as $68,850. Northern states that Mid-America would reimburse it for the costs of the proposed delivery point.

Any person or the Commission's staff may, within 45 days after issuance of

the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–6770 Filed 3–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 3083–072 and 3083–078]

Oklahoma Municipal Power Authority; Notice Shortening Comment Period

March 15, 1996.

On March 14, 1996, the Oklahoma Municipal Power Authority (OMPA) field an offer of settlement in the above-captioned together with an unopposed request for shortening of the comment period under Rule 602(f)(2) of the Commission's Rule of Practice and Procedure, 18 CFR 385.602(f)(2). OMPA requests shortened comment periods in order to facilitate Commission action on the offer by May 1, 1996, when OMPA is required to begin monitoring and managing its hydroelectric electric operations to maintain water quality standards for dissolved oxygen under its previously approved water quality plan. OMPA requests that the comment period be shortened to March 29, 1996 (15 days) for original comments, and to April 5, 1996 (7 days) for reply comments. For good cause shown, the comment periods are shortened as requested.

Lois D. Cashell,

Secretary.

[FR Doc. 96–6769 Filed 3–20–96; 8:45 am]

BILLING CODE 6717–01–M

Federal Energy Regulatory Commission

[Docket No. CP96–193–000]

Texas Eastern Transmission Corporation; Notice of Request Under Blanket Authorization

March 15, 1996.

Take notice that on February 15, 1996, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP96–193–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a delivery point on its facilities in Bucks County, Pennsylvania to make natural gas deliveries of up to 250,000 dt equivalent of natural gas per day on an interruptible basis under Rate Schedule IT–1 to Interstate Energy Company (IEC), wholly-owned subsidiary of Pennsylvania Power & Light Co. (PP&L), for transmission to PP&L for consumption at PP&L's Martins Creek Steam Electric Station, under the blanket certificate issued in Docket No. CP82–535–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Eastern states that the proposed facilities consist of one 12-inch valve and 12-inch check valve each and electronic gas measurement equipment on Texas Eastern's 30-inch Line 19 and 24-inch Line No. 12, along with dual 12-inch meter runs, related equipment and 50 feet of 18-inch pipeline extending from IEC's 18-inch pipeline to Texas Eastern's Line Nos. 12 and 19. Texas Eastern estimates a cost of facilities of $441,000 which it indicates would be fully reimbursed by IEC.

It is indicated that IEC has requested that Texas Eastern construct and operate the facilities so that IEC may receive natural gas service from Texas Eastern so that IEC may ultimately deliver natural gas service to PP&L's Martins Creek Steam Station in Northampton County, Pennsylvania. It is also indicated that PP&L intends to modify its oil-fired Martins Creek Units 3 and 4 to co-fire these units with natural gas, resulting in reduced carbon dioxide emissions, reduced emissions of sulfur dioxide, reduced nitrous oxide emissions and reduced energy costs. Texas Eastern states that it has been informed by IEC that Martins Creek is not currently, nor has it ever been, served by UGI, Inc, the local distribution company which holds certificate authority from the Pennsylvania Public Utility Commission to provide natural gas service in the vicinity of the power plant. Texas Eastern submits that the delivery point proposed for IEC does not constitute a bypass of UGI.

Texas Eastern states that interruptible transportation service to be rendered to PP&L through the delivery point requested by IEC would be performed using existing capacity on Texas Eastern's system and would have no effect on Texas Eastern's peak day or annual deliveries. It is also stated that the proposal would be accomplished without detriment or disadvantage to Texas Eastern's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–6771 Filed 3–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1096–003, et al.]

PacifiCorp Power Marketing, Inc., et al.; Electric Rate and Corporate Regulation Filings

March 14, 1996.

Take notice that the following filings have been made with the Commission:

1. PacifiCorp Power Marketing, Inc.

[Docket No. ER95–1096–003]

Take notice that on February 2, 1996, PacifiCorp Power Marketing, Inc. tendered for filing a letter requesting an order addressing the substance of its December 14, 1995, Amended Application in the above-referenced docket.

Comment date: March 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Western Power Services, Inc. (formerly Western Gas Resources) Power Marketing, Inc.)

[Docket No. ER95–748–003]

Take notice that on March 1, 1996, Western Power Services, Inc. formerly known as Western Gas Resources Power Marketing, Inc. submits the notification of change in name.

Comment date: March 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Duke/Louis Dreyfus L.L.C.

[Docket No. ER96–108–003]

Take notice that on February 20, 1996, Duke/Louis Dreyfus L.L.C. (Duke/Louis Dreyfus) notified the Commission of a change in status.

The change in status results from the formation by Duke/Louis Dreyfus and Eastern Utilities Associates of a joint venture to market power.

Comment date: March 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Westar Electric Marketing, Inc.

[Docket No. ER96–458–002]

Take notice that on February 20, 1996, Westar Electric Marketing, Inc. tendered for filing a revised Code of Conduct which incorporates requirements specified in the Commission's February 14, 1996, Order on Westar Electric's Application in Docket No. ER96–458–000.

Comment date: March 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Utility Management Corporation

[Docket No. ER96–1144–000]

Take notice that on March 7, 1996, Utility Management Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: March 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Kentucky Utilities Company

[Docket No. ER96–1239–000]

Take notice that on March 1, 1996, Kentucky Utilities Company (KU), tendered for filing a service agreement between KU and Engelhard Power Marketing, Inc. under its TS Tariff. KU requests an effective date of February 27, 1996.

Comment date: March 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Maine Public Service Company

[Docket No. ER96–1240–000]

Take notice that on March 4, 1996, Maine Public Service Company (Maine Public), filed an executed Service Agreement with Green Mountain Power Corporation.

Comment date: March 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. South Carolina Electric & Gas Company

[Docket No. ER96–1241–000]

Take notice that on March 4, 1996, South Carolina Electric & Gas Company, tendered for filing proposed Contract for Purchases and Sales of Power and Energy between South Carolina Electric & Gas Company and Koch Power Services, Inc.

Under the proposed contract, the parties will purchase and sell electric energy and power between themselves. South Carolina Electric and Gas Company also requested waiver of notice in order that the contract be effective on April 1, 1996.

Copies of this filing were served upon Koch Power Services, Inc.

Comment date: March 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Interstate Power Company

[Docket No. ER96–1242–000]

Take notice that on March 4, 1996, Interstate Power Company, tendered for filing a Notice of Cancellation of its Rate Schedule FERC No. 0129.

Comment date: March 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Cinergy Services, Inc.

[Docket No. ER96–1243–000]

Take notice that on March 4, 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 Illinois Power Company.

Comment date: March 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. New England Power Pool

[Docket No. ER96–1244–000]

Take notice that on March 4, 1996, the New England Power Pool Executive Committee filed a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by North American Energy Corporation, Inc. (North American). The New England Power Pool Agreement, as amended, has been designated NEPOOL FPC No. 2.

The Executive Committee states that acceptance of the signature page would permit North American to join the over 90 other electric utilities and independent power producers that already participate in the Pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make North American a Participant in the Pool. NEPOOL requests an effective date of May 1, 1996 for commencement of participation in the Pool by North American.

Comment date: March 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. New England Power Pool

[Docket No. ER96–1245–000]

Take notice that on March 4, 1996, the New England Power Pool Executive Committee filed a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by Phibro, Inc. (Phibro). The New England Power Pool Agreement, as amended, has been designated NEPOOL FPC No. 2.

The Executive Committee states that acceptance of the signature page would permit Phibro to join over 90 other electric utilities and independent power producers that already participate in the Pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Phibro a Participant in the Pool. NEPOOL requests an effective date of May 1, 1996, for commencement of participation in the Pool by Phibro.

Comment date: March 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. El Paso Electric Company

[Docket No. ER96–1246–000]

Take notice that on March 4, 1996, El Paso Electric Company (El Paso or the Company), filed a Utility Service Contract with the Department of the Air Force for service to Holloman Air Force Base in Alamogordo, New Mexico (Holloman). The rates charged by EPE for service pursuant to the contract are regulated by the New Mexico Public Utility Commission for retail service.

The Company reiterates in its present filing its request that the Commission disclaim jurisdiction over the sale in view of the *de minimis* amount of resales. If the Commission does not disclaim jurisdiction, the Company asks that the Commission treat the contract as filed effective as of December 27, 1995 as to service which is to be resold by Holloman to non-government users.

Comment date: March 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Florida Power Corporation

[Docket No. ER96–1247–000]

Take notice that on March 4, 1996, Florida Power Corporation tendered for filing an amendment to the All Requirements Electric Service Agreement with the City of Newberry dated September 1, 1988. The amendment (a) prevents either Florida Power or Newberry from seeking any change in the rate schedule for all requirements service or the terms and conditions of that service to become effective prior to January 1, 2006; (b) allows either party to terminate service by giving five years' written notice no earlier than January 1, 2001, and (c) provides for an annual review of the rates in the agreement for service beyond December 1, 2005.

The amendment provides that it shall become effective as soon as a new territorial agreement between the Company and the Customer is approved by the Florida Public Service Commission. The territorial agreement is in the process of being finalized.

Comment date: March 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Southern California Edison Company

[Docket No. ER96–1248–000]

Take notice that on March 4, 1996, Southern California Edison Company (Edison), tendered for filing the following Supplemental Agreement (Supplemental Agreement) to the 1990 Integrated Operations Agreement between the City of Azusa (Azusa) and Edison, FERC Rate Schedule No. 247:

Supplemental Agreement for the Integration of Non-Firm Energy from Idaho Power Company Between Southern California Edison Company and City of Azusa

The Supplemental Agreement sets forth the terms and conditions by which Edison will integrate Azusa's purchases of non-firm energy under the Power Sale Agreement between Azusa and Idaho Power Company during the specified winter months of November through April. Edison is requesting waiver of the 60-day prior notice requirement, and requests that the Commission assign to the Supplemental Agreement an effective date of March 5, 1996.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: March 28, 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. 96–6822 Filed 3–20–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER96–1249–000, et al.]

Southern California Edison Company, et al.; Electric Rate and Corporate Regulation Filings

March 15, 1996.

Take notice that the following filings have been made with the Commission:

1. Southern California Edison Company

[Docket No. ER96–1249–000]

Take notice that on March 4, 1996, Southern California Edison Company (Edison), tendered for filing the following Supplemental Agreement (Supplemental Agreement) to the 1990 Integrated Operations Agreement between the City of Colton (Colton) and Edison, FERC Rate Schedule No. 249:

Supplemental Agreement for the Integration of Non-Firm Energy From Idaho Power Company Between Southern California Edison Company and City of Colton

The Supplemental Agreement sets forth the terms and conditions by which Edison will integrate Colton's purchases of non-firm energy under the Power Sale Agreement between Colton and Idaho Power Company during the specified winter months of November through April. Edison is requesting waiver of the 60-day prior notice requirement, and requests that the Commission assign to the Supplemental Agreement an effective date of March 5, 1996.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: March 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Southern California Edison Company

[Docket No. ER96–1250–000]

Take notice that on March 4, 1996, Southern California Edison Company (Edison) tendered for filing a letter dated December 28, 1995 (Letter), from the City of Colton (Colton). The Letter reduces the Contract Capacity referenced in the 1995, Power Sale Agreement between Colton and Edison, Commission Rate Schedule No. 345.

Edison requests an effective date of June 1, 1996.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: March 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Consumers Power Company

[Docket No. ER96–1251–000]

Take notice that on March 5, 1996, Consumers Power Company, tendered for filing Amendment No. 1 to the wholesale service agreement dated September 19, 1994, providing for the sale of firm and non-firm power to Alpena Power Company.

Copies of the filing were served upon Alpena Power Company and the Michigan Public Service Commission.

Comment date: March 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Southern Company Services, Inc.

[Docket No. ER96–1254–000]

Take notice that on March 5, 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 Delhi Energy Services. 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 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power Corporation

[Docket No. ER96–1255–000]

Take notice that on March 5, 1996, Florida Power Corporation tendered for

filing (1) an extended letter agreement among Florida Power Corporation, Florida Cities and Seminole Electric Cooperative in which Florida Power agrees to the same rate moratorium provision that it agreed to with Reedy Creek Improvement District in Docket No. ER95–457–000 and (2) rate schedule revisions providing for the moratorium. The Company requests that the rate schedule revisions be allowed to become effective as of March 5, 1996.

Comment date: March 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Consolidated Edison Company of New York, Inc.

[Docket No. ER96–1256–000]

Take notice that on March 5, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing an agreement to provide interruptible transmission service for Gateway Energy, Inc. (Gateway).

Con Edison states that a copy of this filing has been served by mail upon Gateway.

Comment date: March 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Consolidated Edison Company of New York, Inc.

[Docket No. ER96–1257–000]

Take notice that on March 5, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to Con Edison Rate Schedule FERC No. 128, the PARS Facilities Agreement under which Con Edison is responsible for the purchase, installation, operation, and maintenance of phase angle regulators at the Branchburg-Ramapo Interconnection between the New York Power Pool (NYPP) and the Pennsylvania-New Jersey-Maryland (PJM) Interconnection. Con Edison has requested waiver of notice requirements so that the Supplement can be made effective as of January 1, 1994.

Con Edison states that a copy of this filing has been served by mail upon NYPP and PJM.

Comment date: March 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Cinergy Services, Inc.

[Docket No. ER96–1258–000]

Take notice that on March 5, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated February 1, 1996, between Cinergy, CG&E, PSI and Western Gas Resources Power Marketing, Inc. (WGRPM).

The Interchange Agreement provides for the following service between Cinergy and WGRPM.

1. Exhibit A—Power Sales by WGRPM
2. Exhibit B—Power Sales by Cinergy

Cinergy and WGRPM have requested an effective date of April 1, 1996.

Copies of the filing were served on Western Gas Resources Power Marketing, Inc., the Public Utilities Commission of the State of Colorado, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: March 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Louisville Gas and Electric Company

[Docket No. ER96–1259–000]

Take notice that on March 5, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Koch Power Services, Inc., under Rate GSS.

Comment date: March 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Central Illinois Light Company

[Docket No. ER96–1260–000]

Take notice that on March 6, 1996, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission a substitute Index of Customers under its Coordination Sales Tariff and service agreements for five new customers.

CILCO requested an effective date of March 8, 1996.

Copies of the filing were served on all affected customers parties and the Illinois Commerce Commission.

Comment date: March 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER96–1261–000]

Take notice that on March 4, 1996, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Service Agreements to add the following Customers as of the effective dates listed below:

Catex Vitol Electric, L.L.C., February 5, 1996
Citizens Lehman Power Sales, February 5, 1996
Electric Clearinghouse, Inc., February 5, 1996
Industrial Energy Applications, Inc., February 5, 1996
Louis Dreyfus Electric Power Inc., February 5, 1996
NorAm Energy Services, Inc., February, 1996
Sonat Power Marketing, Inc., February 5, 1996
Tennessee Power Company, February 5, 1996
InterCoast Power Marketing Company, February 7, 1996
Ohio Edison Company, February 12, 1996
PowerNet Corporation, February 16, 1996
CNG Power Services Corporation, February 21, 1996

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission and the West Virginia Public Service Commission.

Comment date: March 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER96–1262–000]

Take notice that on March 5, 1996, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed a Service Agreement to add PECO Energy Company as a Customer under Allegheny Power's Point-to-Point Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission. Allegheny Power proposes to make service available to PECO Energy Company as of February 5, 1996.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission and the West Virginia Public Service Commission.

Comment date: March 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Louisville Gas and Electric Company

[Docket No. ER96–1263–000]

Take notice that on March 6, 1996, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Rainbow Energy Marketing Corporation under Rate GSS.

Comment date: March 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Saguaro Power Company, a Limited Partnership

[Docket No. QF90–203–001]

On February 21, 1996, Saguaro Power Company, a Limited Partnership (Applicant), submitted for filing an amendment to its filing in this docket.

The amendment provides additional information pertaining to the ownership of its cogeneration facility. No determination has been made that the submittal constitutes a complete filing.

Comment date: April 4, 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. 96–6824 Filed 3–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–178–000]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Attendance at Meetings and Site Visit

March 15, 1996.

On March 26, 1996, at 10:00 a.m., the Office of Pipeline Regulation (OPR) staff will participate in an inspection with Maritimes & Northeast Pipeline, L.L.C. (M&NP) and the Massachusetts Energy Facilities Siting Board (Siting Board), of the locations to the facilities proposed by M&NP in Massachusetts (M&NP Project).

On March 26 and 28, 1996, at 7:00 p.m., the OPR staff will attend public scoping meetings to be conducted by the Siting Board and the Environmental Policy Act Unit of the Massachusetts Executive Office of Environmental Affairs. These meetings will take place, respectively, in Dracut and Methuen, Massachusetts.

On March 27, 1996, the OPR staff will inspect by helicopter and on the ground, along with M&NP personnel, the locations related to the facilities proposed by M&NP in Massachusetts, New Hampshire, and Maine.

All interested parties may attend. Those planning to attend the March 27, 1996 site inspection must provide their own transportation.

The Commission will issue a notice of its own environmental scoping meetings for this project in the future.

For further information, call Jeff Gerber, (202) 208–1121.

Lois D. Cashell,

Secretary.

[FR Doc. 96–6773 Filed 3–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 5984–000–NY]

Niagara Mohawk Power Corporation; Notice of Availability of Environmental Assessment

March 15, 1996.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the Oswego Falls Hydroelectric Project, located on the Oswego River in the city of Fulton, Oswego County, New York, and has prepared a final Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate environmental protection or enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 2A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–6768 Filed 3–20–96; 8:45 am]

BILLING CODE 6717–01–M

Notice of Amendments to License Application Filed With the Commission

March 15, 1996.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: New License.

b. Project No.: 2188–030.

c. Dates Filed: November 30, 1992. Dates Amended: (1) February 24, 1994; (2) March 21, 1994; (3) March 2, 1995; (4) June 16, 1995; and (5) March 6, 1996.

d. Applicant: Montana Power Company.

e. Name of Project: Missouri-Madison Hydroelectric Project.

f. Location: On the Madison and Missouri Rivers in Gallatin, Madison, Lewis and Clark, and Cascade Counties, Montana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Ms. Linda McGillan, Montana Power Company, 40 East Broadway, Butte, MT 59701, (406) 723–5454, Ext. 73352.

i. FERC Contact: Mr. John McEachern, (202) 219–3056.

j. Comment Date: May 1, 1996.

k. Description of Project: The existing Missouri-Madison Project consists of nine developments described as follows.

The Hebgen Development which includes: a reservoir that stores and regulates flow from a 905 square mile drainage area and has a surface area of 13,000 acres at normal maximum reservoir water level of 6,534.87 feet. Normal maximum reservoir storage is 386,184 acre-feet, of which 378,845 acre-feet are usable storage between elevations 6,473 feet and 6,534.87 feet. Existing structures consist of a diversion dam, an outlet works, a side-channel spillway, several buildings, and two 15 kW diesel-fueled generators. The dam is an earth-filled structure 721 feet long and 85 feet above the streambed. The outlet works consists of an intake structure, an outlet conduit through the dam, and a terminal structure. The spillway, which is located on the right bank of the river, is 375 feet long and discharges to a discharge chute that varies from 47 feet wide at the inlet to 20 feet wide at the downstream end. The downstream end is equipped with a flip bucket that provides energy dissipation into a riprap-lined plunge

pool in the Madison River. The buildings include a residence, garage, recreation residences, and boathouse.

The Madison Development which includes: a reservoir, known as Ennis Lake, that intercepts a drainage area of 2,181 square miles and has a normal maximum surface area of 3,900 acres at elevation 4,841 feet. Normal maximum reservoir storage is 41,917 acre-feet, of which 39,115 acre-feet are usable storage between elevations 4,826 feet and 4,841 feet. Existing structures consist of the diversion dam, intake, a flow line, a surge chamber, penstocks, a powerhouse, and a tailrace. The generating facilities at the powerhouse connect to a 100-kV power line that is part of Montana Power's transmission system. The dam, which is 257 feet long and 38.5 feet high above the streambed, consists of a rock-filled spillway, a concrete intake structure, and two non-overflow abutment sections at each end. The spillway is 140 feet long with roller-equipped side panels for providing control of flow. The intake is at the right end of the spillway and provides flow control to the steel flow line. The flow line, which is 7,500 feet long and 13 feet in diameter, is located on the right side of the river and leads to the surge chamber and the powerhouse. The concrete surge chamber is 38 feet wide, 117 feet long, and 34 feet high, and has an overflow spillway over which water is discharged in the event of a plant trip. Four penstocks 9 feet in diameter and about 90 feet long convey water from the surge chamber to the powerhouse. The powerhouse is 203 feet long, 67 feet wide, and 36 feet high, and contains four generating units and associated equipment.

The Hauser Development which includes: two connected reservoirs, Hauser Lake and Lake Helena, that have a surface area of 5,970 acres and intercept a drainage area of 16,876 square miles. Usable storage capacities are 52,893 acre-feet for Hauser Lake and 11,360 acre-feet for Lake Helena. Existing structures consist of a diversion dam, a forebay, six penstocks, a powerhouse, a tailrace, and two 69-kV transmission lines. A roadway embankment with a sluiceway connection to the main reservoir isolates Lake Helena from Hauser Lake, Hauser Dam is 700 feet long and 80 feet high above the streambead. It consists of a spillway, a non-overflow section, a forebay intake section, a two abutment sections. The spillway is 493 feet long with slidegates and removable flashboards for flow control. The intake, which enters the forebay, is located between the non-overflow section and the right abutment section. The forebay is a concrete structure 250 feet long and 39 feet wide, which directs flow to the powerhouse. Six steel penstocks 12 to 14 feet in diameter convey water from the forebay to the six turbines in the powerhouse, which is 236 feet long and 57 feet wide. Each of the two transmission lines is 12 miles long and extends to the East Helena switching station.

The Holter Development which includes: a reservoir that has a surface area of 4,550 acres at an elevation of 3,564 feet and intercepts an area of 17,150 square miles. Normal maximum reservoir storage is 240,000 acre-feet, of which 81,920 acre-feet are usable storage between elevations 3,543 feet and 3,564 feet. Existing structures consist of a diversion dam, a powerhouse, and a tailrace. The dam is 1,364 feet long and 124 feet high above the streambed. It consists of a central overflow spillway section, right and left non-overflow sections, and a powerhouse intake section. The spillway is 682 feet long with slide gates and removable flashboards for flow control The powerhouse is constructed integrally with the dam and averages 208 feet long and 81 feet wide.

The Black Eagle Development which includes: a reservoir that intercepts an area of 22,100 square miles and has a surface area of 402 acres at the normal maximum reservoir water level of 3,290 feet elevation. Normal maximum reservoir storage is 1,820 acre-feet, of which 1,710 acre-feet are usable storage between elevations 3,279 feet 3,290 feet. Existing structures consist of a diversion dam, a forebay, a powerhouse, and a tailrace. The dam is 782 feet long and 34.5 feet high above the streambed. It consists of a 646-foot-long overflow spillway with removable flashboards for flow control, a 105-foot-long wastegate section with slidegates for flow control, and a right abutment section. The forebay, which forms the left abutment of the dam, is 421 feet long and 96 feet wide and directs flow to the powerhouse. The intake and the powerhouse averages 135 feet long and 50 feet wide and contains three generators. The tailrace channel is about 1,500 feet long with concrete sidewalls.

The Rainbow Development which includes: a reservoir that has a surface area of 126 acres at normal reservoir water level of 3,224 feet. Normal maximum reservoir storage is 1,237 acre-feet, of which 1,170 acre-feet are usable storage between elevations 3,212 feet and 3,224 feet. Existing structures include a diversion dam, three flow lines, a surge tank, a surge chamber, 16 penstocks, a powerhouse, and a tailrace. The dam, which is 1,146 feet long and 44 feet high above the streambed, consists of an overflow spillway, a concrete intake section, and a wastegate structure on the right abutment. The spillway is 1,065 feet long with rubber dams and removable flashboards for flow control. Two adjacent structures totaling about 200 feet wide form the intake, which discharges into flow lines that are about 2,400 feet long. Flow lines for units 7 and 8 have a surge tank 40 feet in diameter and 65 feet high. A standpipe 12 feet in diameter and 45 feet high is upstream of the surge tank. Flow lines for units 1 through 6 lead to the surge chamber, which is 182 feet wide and 346 feet long and has a spillway for discharge of water in the event of a plant trip. Sixteen buried penstocks transfer water from the surge tank and surge chamber to the eight turbine generating units in the powerhouse. The powerhouse is 41 feet wide and 415 feet long with smaller extensions. The tailrace below the powerhouse is about 60 feet wide and 850 feet long.

The Cochrane Development which includes: a reservoir that intercepts an area of 23,270 square miles and has a surface area of 249 acres at the normal maximum reservoir water level of 3,116.5 feet elevation. Normal maximum reservoir storage is 8,464 acre-feet, of which 4,503 acre-feet are usable storage between elevations 3,090 feet and 3,116.5 feet. Existing structures consist of a diversion dam, a powerhouse, a tailrace, and a 100-kV transmission line. The diversion dam is 856 feet long and 100 feet high above the streambed. It has a spillway section, a powerhouse/intake section, and left and right non-overflow sections. The spillway has radial gates for flow control and a standby generator for emergency gate operation. The intake, penstocks, and powerhouse are constructed integrally with the dam. The left and right non-overflow sections are 190 and 144 feet long, respectively. The transmission line is 2.9 miles long and connects the Cochrane Development to the Rainbow Development switchyard.

The Ryan Development which includes: a reservoir that intercepts a drainage area of 23,080 square miles and has a surface area of 168 acres at normal maximum elevation of 3,037 feet. Normal maximum reservoir storage is 3,653 acre-feet, of which 2,440 acre-feet are usable storage between elevations 3,020 feet and 3,037 feet. Existing structures consist of a diversion dam, penstocks, a powerhouse, a tailrace, and two adjacent 100-kV transmission lines. The diversion dam is 1,465 feet long

and 82 feet high above the streambed. It consists of an overflow spillway, a wastegate section, an intake section, and left and right abutment sections. The spillway is 1,000 feet long with removable flashboards for flow control. The wastegate is 129 feet long with gates for flow control and a skimmer gate. The intake section is between the wastegate section and the left abutment and is 135 feet long. The left and right abutments are 150 and 100 feet long, respectively. eight buried 327-foot-long penstocks convey water from the intake to the powerhouse, which is 253 feet long and 80 feet wide with six main generators and two exciters. The tailrace is about 1,500 feet long and tapers from 220 feet wide at its upstream end to 100 feet wide at the discharge. The two adjacent power lines are 4.6 miles long and terminate at the Rainbow Development switching station.

The Morony Development which includes: a reservoir that intercepts a total drainage area of 23,292 square miles and has a surface of 304 acres at normal maximum reservoir water level of 2,887 feet elevation. Normal maximum reservoir storage is 13,598 acre-feet, of which 7,595 acre-feet are usable storage between elevations 2,887 feet and 2,861 feet. Existing structures consist of a diversion dam, a powerhouse integral with the dam, a tailrace, and a 100-kV transmission line. The dam is 842 feet long and 96 feet high above the streambed. It consists of an overflow spillway section, a powerhouse/intake section, and left and right non-overflow sections. The spillway is 390 feet long with nine radial gates for regulating flow and a slide gate for handling trash. The powerhouse/intake section is 195 feet long and contains the penstocks leading to the powerhouse, which is 162 feet long and 58 feet wide. Water is discharged through a short tail race. The left and right non-overflow sections of the dam are 199 and 68 feet long, respectively. The 100-kV transmission line is 8.5 miles long and terminates at the Great Falls switchyard. The original license included a 7.4-mile-long, 100-kV transmission line to the Rainbow Development switchyard.

Amendment 1: On page E–2–60 of the application, Montana Power proposed development of a day use recreation area on the north shore of Ennis Lake at the Madison Development. Montana Power amends this proposal by substituting development of Sandy Beach, also on the north shore of Ennis Lake, as the day use area site. In addition, Montana Power amends its application to reallocate $1 million from the $1.5 million originally proposed for the Black Eagle Recreation Area (page E–5–52 of the application) and $100,000 from the $200,000 originally proposed for the Sulfur Springs Trailhead (page E–5–54 of the application) to partially fund construction of the Lewis and Clark Interpretive Center in Great Falls.

Amendment 2: In the application, Montana Power proposed to conduct a study to evaluate the effects of flow reductions on fisheries and fish habitat in the bypass reach of the Madison River (pages E–2–15 and E–2–16 of the application) and to fund a flushing flow (sediment transport) study in the Madison and Missouri rivers (pages E–1–15, E–2–13, E–4–12, and E–9–9 of the application). Montana Power has subsequently completed final reports on these studies, and amends the application by proposing additional measures to protect, mitigate, and enhance fisheries resources in the Madison River bypass reach and measures to maintain adequate flushing flows in the Madison River Downstream of Hebgen and Madison dams. Additional measures proposed for the Madison River bypass include:

(1) Funding for initial supplementation of spawning gravels at three key locations within the bypass reach ($27,000);

(2) Funding for annual replacement of spawning gravels transported by high flows at key locations within the bypass reach. The proposed Madison River fisheries biologist (page E–2–14 of the application) would evaluate the feasibility of introducing replacement gravels at upstream reaches in the bypass (e.g., below Madison Dam). If feasible, this method could replenish spawning gravels at key sites by natural downstream transport during high flows ($5,500 per year for gravel replacement at three key sites; $2,000 per year if gravel replacement at a single upstream site is feasible);

(3) Maintaining an instantaneous minimum spawning flow of 200 cfs in the bypass reach from April 1 through June 30, and an instantaneous minimum (maintenance) flow of 80 cfs in the bypass reach from July 1 through March 31 ($97,693 per year);

(4) In the bypass reach, flow reductions from 600 cfs to minimum flow would not exceed 100 cfs per hour, and flow increases from less than 600 cfs to 600 cfs would not exceed 100 cfs per hour (except when needed to meet the 1,100 cfs minimum flow below the powerhouse or to avoid overfilling Ennis Lake);

(5) Establishing a permanent flow gauge station in the bypass reach to monitor instantaneous minimum flow and flow ramping rate (at bypass streamflows less than 600 cfs); and

(6) Activities of the proposed Madison River fisheries biologist (page E–2–14 of the application) may include: (1) monitoring of salmonid species specific habitat usage and preference in the bypass reach; (2) analysis of invertebrate drift and fish populations relative to bypass reach flows; (3) spawning gravel supplementation and evaluation; and, (4) additional fish outmigration trapping and standing surveys during bypass reach upramping and downramping periods.

Additional measures proposed for flushing flows include:

(1) Operating Hebgen Dam (pages E–1–7 to E–1–9 of the application) and Madison Dam (pages E–2–4 to E–2–6 of the application) in recognition of continued flushing flow needs in the Upper Madison River and funding further investigation of flushing flow needs in the Lower Madison River near Norris and Greycliff;

(2) Cooperating with the Bureau of Reclamation, in consultation with other agencies, and the public to determine appropriate releases from Canyon Ferry Dam to meet flushing flow needs in the Missouri River below Canyon Ferry, Holter, and Hauser dams; and

(3) Monitoring flushing flow needs in the Upper and Lower Madison River near Kirby Ranch, Ennis, Norris, and Greycliff for 3 consecutive years (1995–1997) to establish baseline conditions, and every 5 years thereafter for the term of the new license.

Amendment 3: On pages A–2–1 through A–2–6 of the application, Montana Power proposed replacing the existing four Madison Development horizontal turbines and generators with four vertical Francis turbines and four vertical shaft generators. Montana Power amends this proposal by substituting rehabilitation and upgrade modifications to the four existing horizontal turbines and generators.

Amendment 4: On pages C–2–1, C–3–1, C–6–1, and C–8–1 of the application, Montana Power proposed schedules for completing modifications and/or expansions at the Madison, Hauser, Rainbow, and Ryan developments, respectively. All construction dates were based on the assumption that a new license would be issued in 1994. Montana Power amends this proposal by changing the construction dates for the Madison, Hauser, and Rainbow developments and by deleting the proposed modification to the Ryan Development, as follows:

Development name	Application construction start date	Amendment construction start date[1]	Amended on-line date
Madison	1995	2001	Late 2002.
Hauser	1998	2000	Late 2002.
Rainbow	1996	2006	2010
Ryan	Subject to additional study.	None. No plans for construction at this time.	None at this time.

[1] These dates assume that a new license will be issued in the last quarter of 1996.

Amendment 5: Montana Power's fifth amendment to the license application includes the revisions and material listed below.

(1) Throughout the application, Montana Power refers to the operating level of Cochrane Reservoir as 3,115.0 feet. This amendment is to change all references to the operating level of Cochrane Reservoir from 3,115.0 feet to 3,116.5.

(2) Montana Power submitted at Madison Thermal Mitigation Plan to the Commission on June 30, 1995. This amendment includes a revised Final Madison Thermal Mitigation Plan.

(3) In its August 21, 1995, filing with the Commission, Montana Power stated that it would submit the Comprehensive Recreation Plan Executive Summary upon its completion. This amendment includes the Comprehensive Recreation Plan Executive Summary.

(4) In its August 21, 1995, filing with the Commission, Montana Power stated that the 1995 Madison River temperature and meteorological field data would be available in November. This amendment includes the 1995 temperature and meteorological data.

(5) Since filing the final application, Montana Power has completed some of the proposed enhancement measures in Exhibit E, and some of the cost estimates of enhancements have been updated. This amendment includes revised Exhibit E tables that depict these changes in cost estimates and summarize the funds Montana Power has spent on various enhancement measures since filing the application in 1992.

(6) In its August 21, 1995, filing with the Commission, Montana Power provided updated Benefit/Cost Work Papers for all the Missouri-Madison developments based on its 1995 *Electric Integrated Least Cost Resources Plan* (ILCP). This amendment includes newly updated and revised Benefit/Cost Work Papers.

l. Available Location of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 1st Street, NE., Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Montana Power Company, 40 East Broadway, Butte, MT 59701 or by calling (406) 723–5454.

m. Refiling of comments on the original application or motions to intervene in this docket is not necessary. This notice supplements the notice issued April 6, 1995, for Montana Power Company's Project No. 2188–030. Comments on the amendments to the license application should be filed by May 1, 1996.

n. Montana Power's responses to comments on the amendments to the license application should be filed by June 1, 1996.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters and title ''COMMENTS,'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS,'' or ''PROTEST'', ''MOTION TO INTERVENE,'' as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 1st Street, NE., Washington, DC 20436. An additional copy must be sent to: the Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above 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.

p. This notice also consists of the following standard paragraph: B.

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 and 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.

Lois D. Cashell,

Secretary.

[FR Doc. 96–6767 Filed 3–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–235–000, et al.]

Southern Natural Gas Company, et al.; Natural Gas Certificate Filings

March 14, 1996.

Take notice that the following filings have been made with the Commission:

1. Southern Natural Gas Company

[Docket No. CP96–235–000]

Take notice that on March 6, 1996, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP96–235–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate a new natural gas delivery point located in Etowah County, Alabama under Southern's blanket certificate issued in Docket No. CP82–406–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Southern proposes to construct and operate a new delivery point consisting of two 6-inch turbine meters and other appurtenant facilities for DeKalb-Cherokee County Gas District (DeKalb-Cherokee). Southern states that the new facilities would cost approximately $307,700 and DeKalb-Cherokee would reimburse Southern for these costs. Southern adds that DeKalb-Cherokee would construct, own and operate, as part of its natural gas distribution system, 58 miles of 10 or 12 inch diameter pipeline extending from the outlet of the proposed meter station to its existing distribution system.

Southern states that DeKalb-Cherokee does not propose to add any additional transportation demand to its firm service agreements as a result of the addition of the delivery point. Southern asserts that DeKalb-Cherokee has elected to assign a Maximum Daily Delivery Quantity of 5,657 Mcf of gas per day from its existing delivery point to the proposed new delivery point. Southern estimates that average annual gas deliveries at the new delivery point would be 1,095,000 Mcf. Southern mentions that the proposed facilities will have no adverse effect on its ability to provide its peak day or firm deliveries.

Comment date: April 29, 1996, in accordance with Standard Paragraph G at the end of this notice.

2. Northwest Pipeline Corporation

[Docket No. CP96–236–000]

Take notice that on March 7, 1996, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP96–236–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon certain facilities and construct and operate replacement facilities under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest proposes to abandon certain undersized facilities and construct and operate replacement facilities in order to provide firm service to Washington Water Power Company at a cost of $260,880.

Comment date: April 29, 1996, in accordance with Standard Paragraph G at the end of this notice.

3. Williams Natural Gas Company

[Docket No. CP96–240–000]

Take notice that on March 8, 1996, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP96–240–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to utilize facilities originally installed for transportation of natural gas under Section 311 of the Natural Gas Policy Act of 1978 (NGPA) for purposes other than NGPA Section 311 transportation under WNG's blanket certificate issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

WNG proposes to utilize the NGPA Section 311 facilities originally installed for transportation of natural gas to Tartan Energy Company (Tartan) located in Greene County, Missouri for deliveries of gas other than NGPA Section 311 transportation. The facilities consist of a dual 4-inch meter run, regulator and electronic flow measurement equipment. WNG states that the cost to construct the facilities was $105,070. WNG states that the authorization requested would allow Tartan additional receipt point flexibility in the future.

WNG states that the proposed change is not prohibited by an existing tariff and that it has sufficient capacity to accomplish the deliveries estimated as up to 10,100 Dth per day and annual volume of 2,000,000 Dth without detriment or disadvantage to its other customers.

Comment date: April 29, 1996, in accordance with Standard Paragraph G at the end of this notice.

4. Tennessee Gas Pipeline Company

[Docket No. CP96–241–000]

Take notice that on March 11, 1996, Tennessee Gas Pipeline Company (Tennessee), Post Office Box 2511, Houston, Texas 77252, filed a request with the Commission in Docket No. CP96–241–000 pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to modify an existing receipt point to provide a delivery point for Hunt Petroleum Corporation (Hunt Petroleum), authorized in blanket certificate issued in Docket No. CP82–413–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to establish a delivery point for Hunt Petroleum by modifying an existing receipt point located at Tennessee's Milepost 525A–101+0.33 in Plaquemines Parish, Louisiana. To accomplish this Tennessee would remove an existing check valve, fabricate, install, own, operate and maintain a tie-in assembly and install measurement charts at Hunt Petroleum's platform. Hunt Petroleum will own and Tennessee will inspect Hunt Petroleum's installation of a 2 inch orifice meter that would be used as the delivery meter for Hunt Petroleum's gas lift operations.

Comment date: April 29, 1996, in accordance with Standard Paragraph G at the end of this notice.

5. Transcontinental Gas Pipe Line Corporation

[Docket No. CP96–242–000]

Take notice that on March 11, 1996, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP96–242–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon an off system gas supply facility located in Hidalgo County, Texas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Transco proposes to abandon the facility, which consists of approximately 2.47 miles of small diameter pipeline and an associated meter located in the South McAllen field in Hidalgo County. Transco proposes to retire the line in place and to remove the meter. It is stated that the facility was constructed under Commission authorization in Docket Nos. CP78–541, CP79–506, and CP80–415. Transco requests abandonment authorization because the pipeline has developed a leak which would require repairs costing $30,000 which Transco has determined is uneconomical. It is asserted that Transco has minimal gas supplies located behind the facility. It is further asserted that the abandonment would have no impact on Transco's customers or rate schedules.

Comment date: April 4, 1996, in accordance with Standard Paragraph F at the end of this notice.

6. Northern Natural Gas Company

[Docket No. CP96–244–000]

Take notice that on March 13, 1996, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed a prior notice request with the Commission in Docket No. CP96–244–000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to abandon three small volume meter stations (farm taps) in Nebraska and Minnesota under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

Northern proposes to abandon by removal three farm taps located in Johnson County, Nebraska, and Dodge County, Minnesota, and currently served by Peoples Natural Gas Company. Northern states that it would remove taps from farms belonging to Kevin Kuhlman in Johnson County,

Bernice Hackenmiller in Dodge County, and Ken and Dorothy Mensing in Dodge County, all who have requested the removals.

Comment date: April 29, 1996, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to 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 therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–6823 Filed 3–20–96; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5443–6]

Agency Information Collection Activities Up for Renewal; Request for Comments: Beach Closing Survey Report on the Great Lakes (OMB Control Number 2090–003)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before May 20, 1996.

ADDRESSES: Great Lakes National Program Office, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, G–9J, Chicago, IL 60604–3590.

Request copy of Beach Closing Survey questionnaire from David C. Rockwell, Environmental Scientist at the above address or locate electronically at http://glnpogis2.r05.epa.gov/glnpo/glnpo.html

FOR FURTHER INFORMATION CONTACT: David C. Rockwell, phone (313) 353–1373; fax: (312) 353–2018; email: Rockwell.David@epamail.epa.gov

SUPPLEMENTARY INFORMATION: Affected entities: Entities affected by this action are city and county public health agencies involved with monitoring bathing beach water quality.

Title: Beach Closing Survey Report on the Great Lakes, OMB Control Number 2090–0003, August 31, 1999.

Abstract: This information collection will provide a summary report on the number and extent of beaches closed in the Great Lakes Basin. The information is used to respond to public inquiry about bathing beach recreational water quality. Response by county or city public health agencies to this collection of information is voluntary. The information collected consists of public records and is not of a sensitive nature.

A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The Great Lakes National Program Office sends twelve questions (contact David Rockwell for copy) to county or city public health agency officials who maintain beach closing information as a matter of public record for the public bathing beaches under their jurisdiction. The twelve questions have been answered in prior years. The respondent is provided with a copy of the previous year questionnaire, along with the questionnaire for the current year, and asked to note if there were any beaches closed. Questions six and seven are answered every year. Other questions may not require answers if conditions or procedures have not changed. There have been approximately 100 inquiries sent with near 100 percent response. A summary report allows the Great Lakes National Program Manager, United States Environmental Protection Agency (USEPA) to report promptly the annual status of beaches closed to anyone seeking this information. The EPA would like to solicit comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The public reporting burden for this collection of information is estimated to average 30 minutes per questionnaire response.

Dated: March 1, 1996.

Vicki Thomas,

Acting Director, Great Lakes National Program Office.

[FR Doc. 96–6723 Filed 3–19–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by FCC For Extension Under Delegated Authority 5 CFR 1320 authority, Comments Requested

March 14, 1996.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. The FCC is reviewing the following information collection requirements for possible 3-year extension under delegated authority 5 CFR 1320, authority delegated to the Commission by the Office of Management and Budget (OMB).

DATES: Written comments should be submitted on or before May 20, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESS: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0236.

Title: Section 74.703 Interference.

Form Number: None.

Type of Review: Extension of existing collection.

Respondents: Business or other for-profit.

Number of Respondents: 10.

Estimated Time Per Response: 12 hours (this time is split between cost and burden, 2 hours burden for the licensee and 10 hours cost for a communications attorney).

Total Annual Burden: 20 hours.

Needs and Uses: Section 74.703(f) requires licensees of low power TV or TV translator stations causing interference to other stations to submit a report to the FCC detailing the nature of interference, source of interfering signals, and remedial steps taken to eliminate the interference. This report is to be submitted after operation of the station has resumed. The data is used by FCC staff to determine that the licensee has eliminated all interference caused by operation of their station.

OMB Approval Number: 3060–0248.

Title: Section 74.751 Modification of Transmission Systems.

Form Number: None.

Type of Review: Extension of an existing collection.

Respondents: Business or other for-profit.

Number of Respondents: 200.

Estimated Time Per Response: 0.5 hours.

Total Annual Burden: 100.

Needs and Uses: Section 74.751(c) requires licensees of low power TV or TV translator stations to send written notification to the FCC of equipment changes which may be made at licensee's discretion without the use of a formal application. Section 74.751(d) requires that licensees of low power TV or TV translator stations place in the station records a certification that the installation of new or replacement transmitting equipment complies in all respects with the technical requirements of this section and the station authorization. The notifications and certifications of equipment changes are used by FCC staff to assure that the equipment changes made are in full compliance with the technical requirements of this section and the station authorizations and will not cause interference to other authorized stations.

OMB Approval Number: 3060–0095.

Title: Annual Employment Report - Cable Television.

Form Number: FCC 395–A.

Type of Review: Extension of an existing collection.

Respondents: Business or other for-profit.

Number of Respondents: 2,564.

Estimated Time Per Response: 1.75 hours/form; 0.25/certification; 2.417 hours/supplemental information sheet

Total Annual Burden: 4,683 hours.

Needs and Uses: The Annual Employment Report (FCC 395-A) is a data collection device used to assess and enforce the Commission's EEO requirements. The report identifies employees by gender, race, color and/or national origin in nine major job categories. Every cable entity with 6 or more full-time employees and all Satellite Master Antenna Television Systems serving 50 or more subscribers and having 6 or more full-time employees must file annually a full FCC 395-A. However, cable entities with 5 or fewer full-time employees must only file Sections I, II and IX of the FCC 395-A and thereafter need not file again unless its employment increases. In addition, cable entities with 6 or more full-time employees will file a Supplemental Investigation Sheet once every 5 years. The data is used by FCC staff to monitor a cable unit's efforts to afford equal employment opportunity in employment. The data is also used to assess industry trends.

OMB Approval Number: 3060–0574.

Title: MVPD Annual Employment Report.

Form Number: FCC 395–M.

Type of Review: Extension of an existing collection.

Respondents: Business or other for-profit.

Number of Respondents: 155.

Estimated Time Per Response: 1.75 hours/form; 0.25/certification; 2.417 hours/supplemental information sheet.

Total Annual Burden: 232 hours.

Needs and Uses: Section 22(e) of the Cable Television Consumer Protection Act of 1992 (1992 Cable Act) amends the definition of ''cable operator'' for EEO purposes to include program packages of multiple video program distributors (MVPD) using owned or leased transport facilities in the multipoint distribution service (MDS), multichannel, multipoint distribution service (MMDS), direct broadcast satellite (DBS), television receive only (TVRO) and video dialtone facilities to provide multiple channels of video programming. The MVPD Annual Employment Report (FCC 395-M) is a data collection device used to assess and enforce the Commission's EEO requirements. The report identifies employees by gender, race, color and/or national origin in nine major job categories. The FCC 395–M contains a

grid which collects data on full and part-time employees, collects hiring and promotion data for senior upper-level job categories, and a list of job titles within each of the 15 job categories. MVPD units may submit computer-generated lists of job titles which are currently maintained for internal recordkeeping purposes. Every MVPD unit with 6 or more full-time employees must file annually a full FCC 395-M. However, MVPD units with 5 or fewer full-time employees must only file Sections I, II and IX of the FCC 395-M and thereafter need not file again unless its employment increases. In addition, MVPD units with 6 or more full-time employees will file a Supplemental Investigation Sheet once every 5 years. The data is used by FCC staff to monitor a MVPD unit's efforts to afford equal employment opportunity in employment. The data is also used to assess industry trends.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–6760 Filed 3–20–96; 8:45 am]

BILLING CODE 6712–01–F

Public Safety Wireless Advisory Committee; Subcommittee Meetings

AGENCIES: National Telecommunications and Information Administration (NTIA), Commerce, and Federal Communications Commission (FCC).

ACTION: Notice of the next meetings of the Spectrum Requirements, Interoperability, Technology, Operational Requirements and Transition Subcommittees, and the Steering Committee of the Public Safety Wireless Advisory Committee.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the next meetings of the five Subcommittees and Steering Committee of the Public Safety Wireless Advisory Committee. The NTIA and the FCC established a Public Safety Wireless Advisory Committee, Subcommittees, and Steering Committee to prepare a final report to advise the NTIA and the FCC on operational, technical and spectrum requirements of Federal, state and local Public Safety entities through the year 2010. All interested parties are invited to attend and to participate in the next round of meetings of the Subcommittees and the Steering Committee.

DATES: April 10 through 12, 1996.

ADDRESSES: Admiral Kidd Club (Officers Club), Naval Training Center, Harbor Dr. and Laning Rd. (Gate 10), San Diego, CA 92133.

FOR FURTHER INFORMATION CONTACT: For information regarding the Subcommittees, contact:

Interoperability Subcommittee: James E. Downes at 202–622–1582

Operational Requirements Subcommittee: Paul H. Wieck at 515–281–5261

Spectrum Requirements Subcommittee: Richard N. Allen at 703–630–6617

Technology Subcommittee: Alfred Mello at 401–738–2220

Transition Subcommittee: Ronnie Rand at 904–322–2500 or 800–949–2726 ext. 600.

For information regarding accommodations and transportation, contact: Deborah Behlin at 202–418–0650 (phone), 202–418–2643 (fax), or dbehlin@fcc.gov (email). You may also contact Ms. Behlin for general information concerning the Public Safety Wireless Advisory Committee. Information is also available from the Internet at the Public Safety Wireless Advisory Committee homepage (http://pswac.ntia.doc.gov).

SUPPLEMENTARY INFORMATION: The Steering Committee and the five Subcommittees of the Public Safety Wireless Advisory Committee will hold consecutive meetings over a three day period, Wednesday through Friday, April 10, 11, 12, 1996. The expected arrangement of the meetings, which is subject to change at the time of the meetings, is as follows:

April 10: The Steering Committee and then the Transition Subcommittee will meet consecutively starting at 9:00 a.m.

April 11: The Operational Requirements Subcommittee and then the Technology Subcommittee will meet consecutively starting at 9:00 a.m.

April 12: The Interoperability Subcommittee and then the Spectrum Requirements Subcommittee will meet consecutively starting at 9:00 a.m.

The tentative agenda for each subcommittee meeting is as follows:

1. Welcoming Remarks
2. Approval of Agenda
3. Administrative Matters
4. Work Program/Organization of Work
5. Meeting Schedule
6. Agenda for Next Meeting
7. Other Business
8. Closing Remarks

The tentative agenda for the Steering Committee meeting is as follows:

1. Welcoming Remarks
2. Approval of Agenda
3. Administrative Matters
4. Work Program/Organization of Work
5. Meeting Schedule
6. Agenda for Next Meeting
7. Other Business
8. Closing Remarks

Anyone who is submitting papers, information, or written comments to the Steering Committee or any of the five subcommittees is asked to provide 100 copies at time of submittal.

The tentative schedule and general location of future meetings of the Subcommittees of the Public Safety Wireless Advisory Committee is as follows: May 29, 30, 31, 1996, at Scott AFB, Illinois (near St Louis, MO), June 1996, in Washington, DC.

The tentative schedule and general location of the next full meeting of the Public Safety Wireless Advisory Committee is: June 1996, in Washington, DC.

The Co-Designated Federal Officers of the Public Safety Wireless Advisory Committee are William Donald Speights, NTIA, and John J. Borkowski, FCC. For public inspection, a file designated WTB–1 is maintained in the Private Wireless Division of the Wireless Telecommunications Bureau, Federal Communications Commission, Room 8010, 2025 M Street, NW., Washington, DC 20554.

Federal Communications Commission.

Robert H. McNamara,

Chief, Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 96–6794 Filed 3–20–96; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE AND TIME: Tuesday, March 26, 1996 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

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 28, 1996 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes

Title 26 Certification Matters

Advisory Opinion 1996–7:

Sharon Ayres of Harry Browne for President
Advisory Opinion 1995–47:
Congressman Robert Underwood.
Legislative Recommendations 1996
(continued from meeting of March 21, 1996, if necessary)
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 96–7072 Filed 3–19–96; 3:50 pm]

BILLING CODE 6715–01–M

FEDERAL LABOR RELATIONS AUTHORITY

Federal Employees; Criteria To Be Applied in Determining Whether To Transfer Employees From One Collective Bargaining Unit to Another When Both Affected Labor Organizations Agree on the Transfer

AGENCY: Federal Labor Relations Authority.

ACTION: Notice of opportunity to file briefs as *amici curiae* in a proceeding before the Federal Labor Relations Authority in which the Authority is determining whether to grant a petition seeking to transfer employees from one established collective bargaining unit to another.

SUMMARY: The Federal Labor Relations Authority provides an opportunity for all interested persons to file briefs as *amici curiae* on significant issues arising in a case pending before the Authority. The Authority is considering this case pursuant to its responsibilities under the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101–7135 (1988) and its regulations set forth at 5 CFR part 2422 (1994). The issues concern the criteria to be applied to determine whether to grant a petition seeking to transfer employees from one established, nationwide, consolidated collective bargaining unit to another such unit when the exclusive representatives of both units agree on the transfer.

DATES: Briefs submitted in response to this notice will be considered if filed by close of business on April 19, 1996. Extensions of time will not be granted. The date of filing shall be determined by the date of mailing, as indicated by the postmark date. If no postmark date is evident on the mailing, it shall be presumed to have been mailed 5 days prior to receipt. If filing is by personal delivery, it shall be considered filed on the date it is received by the Authority.

ADDRESSES: Mail or deliver briefs to James H. Adams, Acting Director, Case Control Office, Federal Labor Relations Authority, 607 14th Street, NW., Suite 415, Washington, DC 20424–0001.

FORMAT: All briefs shall be captioned ''*National Association of Government Employees/Service Employees International Union, Local 5000 and Service Employees International Union and U.S. Department of Veterans Affairs,* No. WA–AC–50071, Amicus Brief'' and shall contain separate, numbered headings for each issue discussed. Parties must submit an original and four (4) copies of each amicus brief, with any enclosures, on 8½ × 11 inch paper.

FOR FURTHER INFORMATION CONTACT: James H. Adams, Acting Director, Case Control Office, Federal Labor Relations Authority, 607 14th Street, NW., Suite 415, Washington, DC 20424–0001, Telephone: FTS or Commercial (202) 482–6540.

SUPPLEMENTARY INFORMATION: On March 15, 1996, the Authority granted, in part, an application for review of the Regional Director's Decision and Order in *National Association of Government Employees/Service Employees International Union, Local 5000 and Service Employees International Union and U.S. Department of Veterans Affairs,* No. WA–AC–50071. A copy of the decision may be obtained in the Authority's Case Control Office at the aforementioned address; a copy will be forwarded (by mail or facsimile) to any person who so requests by contacting James H. Adams at the same address. A brief summary of the case follows.

The petition in this case, which was filed jointly by the National Association of Government Employees/Service Employees International Union, Local 5000 (NAGE/SEIU or NAGE) and the Service Employees International Union (SEIU), seeks an amendment of certification to transfer employees from a bargaining unit for which SEIU is the exclusive representative to a unit for which NAGE is the exclusive representative. The Agency maintained a ''neutral position'' regarding the petition in proceedings before the RD, and filed no submissions with the Authority.

In 1978, the National Association of Government Employees was certified as the exclusive representative of a nationwide, consolidated bargaining unit composed of certain nonprofessional employees of the Agency. In 1982, the National Association of Government Employees affiliated with SEIU and became NAG/SEIU. SEIU ''has jurisdiction over NAGE.'' Currently, NAGE represents approximately 10,200 nonprofessional employees in this unit.

Since 1980, SEIU has represented a nationwide, consolidated bargaining unit of other nonprofessional employees of the Agency, including approximately 900 employees at the Agency's Medical Center in San Diego, California, who are represented by SEIU Local 102. There are approximately 9,800 employees in SEIU's consolidated unit. SEIU, Local 102 and the Agency's Medical Center in San Diego are parties to a collective bargaining agreement.

The joint petitioners seek to ''sever'' the San Diego Medical Center employees from SEIU's consolidated unit and include them in NAGE's consolidated unit. The petition was filed after a ''special meeting'' was held among SEIU Local 102 members, at which the sole subject was the transfer of affiliation from SEIU to NAGE. All SEIU Local 102 members were invited to the meeting. Following a discussion of the issue of the transfer of affiliation, a total of five members voted unanimously, by secret ballot, to transfer representation from SEIU to NAGE.

The RD dismissed the petition on the ground that the joint petitioners had failed to establish the ''unusual circumstances'' necessary under Authority case law to justify severance of employees from a bargaining.

The Authority granted review under § 2422.17(c)(1) of the Authority's regulations, 5 CFR 2422.17(c)(1), on the ground that there is an absence of precedent on the following issues:

1. Should the facts that the joint petitioners agree that the San Diego employees should be severed from the SEIU unit and included in the NAGE unit, and/or that the agency does not oppose such agreement, be considered in resolving the petition in this case?

2. If those facts are considered, what principles should be used to determine whether to grant the petition?

(a) As to severance, for example, should SEIU's agreement be accorded the same effect as the disclaimer in *Treasury*? It is noted, in this regard, that there is no suggestion that SEIU would disclaim interest in representing the San Diego employees if the petition is dismissed.

(b) As to accretion, for example, should the joint petitioners' agreement be considered dispositive in light of the Agency's neutral position? Are there any circumstances that would override the agreement? Are there any circumstances in which an election should be directed?

The Authority directed the parties to file briefs on the foregoing issues as well as an issue whether, if the petition were to be granted, the resulting units would continue to be appropriate within the meaning of 5 U.S.C. 7112. As these matters are likely to be of concern to agencies, labor organizations, and other interested persons, the Authority finds it appropriate to provide for the filing of amicus briefs addressing these issues.

Dated: March 18, 1996.

For the Authority.

James H. Adams,

Acting Director, Case Control Office.

[FR Doc. 96–6843 Filed 3–20–96; 8:45 am]

BILLING CODE 6727–01–M

FEDERAL MARITIME COMMISSION

Automated Tariff Filing and Information System, Firms Certified for Batch Filing Capability

[Of At Least One Type of Tariff]

As of March 13, 1996

Calcutta, East Coast of India and Bangladesh/U.S.A. Conference, Metuchen, New Jersey
Dart Maritime Service, Bethlehem, Pennsylvania
Distribution Publications, Inc. (''DPI''), Oakland, California
D.X.I., Inc., Pittsburgh, Pennsylvania
Effective Tariff Management Corporation (''ETM''), Bowie, Maryland
Expeditors International (''EI''), Seattle, Washington
Flexible Business Systems, Inc., Miami, Florida
Glenserve Company, Glendora, New Jersey
Insight Consulting Group, Saddle Brook, NJ
Japan-Atlantic and Gulf Freight Conference, Tokyo, Japan
Japan-Puerto Rico & Virgin Island Freight Conference, Tokyo, Japan
Japan-United States Eastbound Freight Conference, Tokyo, Japan
King Ocean Central America, S.A., (''KOCA''), Gundo Alt, Panama
King Ocean Service de Venezuela, S.A. (''KOSDV''), Chuao, Caracas
Logistical Concepts Ltd. (''LCL''), Drexel Hill, Pennsylvania
Maersk Inc., San Francisco, California
Mariner Systems, Inc. San Francisco, California
Maritime Management International, Inc., Miami, Florida
Matson Navigation Company, Inc., San Francisco, California
Matson Terminals, Inc., San Francisco, California
Miller Traffic service, Inc., Maywood, California
Nippon Yusen Kaisha (''NYK''), San Francisco, California
NVO Tariff Services, Fremont, California
NX Corp., Columbia, Maryland
Ocean Tariff Bureau, Long Beach, California
Pacific Coast Tariff Bureau (''PCTB''), San Francisco, California
Paramount Tariff Services, Ltd. (''PTS''), Torrance, California
Rijnhaave Information Services, Inc., and World Tariff Services, Inc. (''WTS''), Union, New Jersey
Simple Transportation Solutions International, Titusville, Florida
Star Shipping A/S, San Francisco, California
Sumner Tariff Services, Inc. Washington, D.C.
Tariff Data Services, Houston, Texas
Transamericas T.I.S., Inc., Falls Church, Virginia
Transax Systems, Bridgewater, New Jersey
Trans-Pacific Freight Conference of Japan, Tokyo, Japan
Transportation Services, Inc. (''TSI''), Fort Lauderdale, Florida
U.S. Traffic Service, Torrance, California
Wallenius Lines AB, Woodcliff Lake, New Jersey
Wallenius Lines North America, Inc., Woodcliff Lake, New Jersey
Zim Container Service, Inc., New York, New York

Note: In the certification process, some certificants used software developed by other firms and may not be holding themselves out of file tariffs for the public, generally.

Joseph C. Polking,

Secretary.

[FR Doc. 96–6821 Filed 3–20–96; 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 4, 1996.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Rickie L. Wiggs, and Gary F. Hileman, both Grand Tower, Illinois; each to acquire an additional 13.3 percent each, for a total of 33.3 percent, of the voting shares of Shawnee Bancshares, Inc., Grand Tower, Illinois.

Board of Governors of the Federal Reserve System, March 15, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96-6785 Filed 3-20-96; 8:45 am]

BILLING CODE 6210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have 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 companies listed below.

The applications 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 each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 15, 1996.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Bank of Boston Corp., Boston, Massachusetts; to acquire 100 percent of the voting shares of, and merge with The Boston Bancorp, Boston, Massachusetts, and thereby indirectly acquire South Boston Savings Bank, Boston, Massachusetts.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. International Bancorporation, Golden Valley, Minnesota; to acquire 100 percent of the voting shares of Northern National Bank, Nisswa, Minnesota, a *de novo* bank.

2. White Pine Bancorp, Inc., Pine River, Minnesota, and Randall Bancorp, Inc., Pine River, Minnesota, and Norbanc Group, Inc., Pine River, Minnesota, to acquire 8.67 percent of the voting shares of Bankers Capital Corporation, Lusk, Wyoming, and thereby indirectly acquire Lusk State Bank, Lusk, Wyoming.

Board of Governors of the Federal Reserve System, March 15, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96-6786 Filed 3-20-96; 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 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 April 4, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. One Valley Bancorp of West Virginia, Inc., Charleston, West Virginia; to acquire CSB Financial Corporation, Lynchburg, Virginia, and its subsidiary, Co-operative Savings Bank, FSB, Lynchburg, Virginia, and thereby engage in operating a savings association and engage in securities and mutual funds brokerage activities, pursuant to §§ 225.25(b)(9) and (15) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Sword Financial Corporation, Horicon, Wisconsin; to engage *de novo* in making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Emprise Financial Corporation, Wichita, Kansas; to acquire Wichita Federal Savings and Loan Association, Wichita, Kansas, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 15, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96-6787 Filed 3-20-96; 8:45 am]

BILLING CODE 6210-01-F

GOVERNMENT PRINTING OFFICE

Depositiory Library Council to the Public Printer; Meeting

The Depository Library Council to the Public Printer (DLC) will hold its Spring 1996 meeting on Monday, April 15, 1996, through Thursday, April 18, 1996, in Arlington, Virginia. The meeting sessions will take place from 8:30 a.m. until 5 p.m. on Monday, Tuesday, Wednesday and from 8:30 a.m. until 12 noon on Thursday. The sessions will be held at the Washington National Airport Hilton, 2399 Jefferson Davis Highway, Arlington, Virginia 22202. The purpose of this meeting is to discuss the Federal Depository Library Program. The meeting is open to the public.

A limited number of hotel rooms have been reserved at the Washington National Airport Hilton for anyone needing hotel accommodations (telephone 703–418–6800; FAX 703–418–3763). Please specify the Depository Library Council when you contact the hotel. Room cost per night is $114.

Michael F. DiMario,

Public Printer.

[FR Doc. 96–6820 Filed 3–20–96; 8:45 am]

BILLING CODE 1505–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–96–12]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the

Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

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 for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

1. Vibrio Illness Investigation Report Form—(0920–0322)—Extension—The purpose of the Cholera and other *Vibrio* Illness Investigation Report Form is to collect information on illness occurring as a result of infection with *Vibrio* species. Vibrios are important pathogens in the United States, and primary septicemia, gastroenteritis, and wound infections have been associated with various species. In particular, gastroenteritis and primary septicemia have been associated with the consumption of undercooked shellfish, and particularly with raw Gulf Coast oysters. Associations have also been linked to wound infections with exposure of broken skin to seawater. Most importantly, *Vibrio cholerae* 01 is the organism responsible for cholera, a severe, dehydrating diarrheal illness. Although infections with *Vibrio cholerae* 01 are notifiable in all states, an official report form for this illness did not previously exist. The Vibrio Illness Investigation Report Form is used to record information on all *Vibrio*-related illness, as well as more detailed information on cholera illness, which is currently a reportable disease in all states. The form has a separate optional Seafood Investigation section to be completed when applicable. The form provides a consolidated, systematic method by which health departments can report such information, which is then used to gain a better understanding of the incidence, etiology, and epidemiology of all *Vibrio*-related illness occurring in the United States.

Data columns have been added to, and comments space reduced on, the form to facilitate data entry and reduce the burden. No change in the frequency of reporting has occurred or is projected.

Most respondents are epidemiologists or nurses in the local health department, but in some instances infection control nurses or physicians might complete the form. The total cost per respondent is estimated at $11.00. This is primarily salary, but also includes postage and telephone calls.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Local health department staff	90	1	0.33	30
Health care facility staff	45	1	0.33	15
Physicians	15	1	0.33	5
Total	.....	.....	.....	50

2. Prospective Evaluation of Health-Care Workers Exposed to Blood From Patients Infected with HIV—(0920–0131)—Extension—The HIV Infections Branch, Hospital Infections Program (HIP), Centers for Disease Control and Prevention (CDC) plans to continue surveillance of health-care workers (HCWs) exposed to the blood of persons infected with human immunodeficiency virus (HIV). This prospective evaluation, initiated in August 1983, provides essential scientific information on the risk of HIV transmission in the health care setting. The objectives of the project are to: (1) estimate the risk of HIV infection in HCWs exposed via the percutaneous, mucous-membrane, or skin route to HIV infected blood, according to type of exposure; (2) describe the type of devices and circumstances of the exposures sustained by HCWs; (3) describe the clinical natural history and development of laboratory markers of HIV infection in HCWs enrolled in this project who seroconvert to HIV; and, (4) describe the use of post-exposure chemoprophylaxis by HCWs exposed to HIV infected blood.

The design of this voluntary surveillance includes enrollment of participating institutions (respondents) throughout the United States. In the event that an HCW employed at the facility sustains an eligible exposure to HIV infected blood, the HCW is enrolled and followed prospectively. Epidemiologic data and serum for HIV antibody testing are collected within 30 days after the exposure with follow-up visits and serum samples collected at 6 weeks, 3, 6, and 12 months from the date of the exposure.

The number of respondents is the expected number of institutions participating in the project annually. The number of responses is based on the average number of forms which will be completed during each year. The 250 HCWs enrolled each year will each need four Follow-up forms completed. The number of Reports of Antiviral Prophylaxis is based on the proportion of HCWs expected to be prescribed antiviral prophylaxis (approximately 40%). The total cost to respondents is estimated at $10,525.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Initial Case Report Form	250	1	0.33	83
Confidential Report Form	250	1	0.25	63
Follow-up Form	250	4	0.25	250

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Antiviral Prophylaxis Rpt	100	1	0.25	25
Total				421

Dated: March 15, 1996.

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–6792 Filed 3–20–96; 8:45 am]

BILLING CODE 4163–18–P

[30DAY–08]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Office on (404) 639–7090.

The following request has been submitted for review since the last publication date on February 6, 1996:

Proposed Project

Hanford Environmental Dose Reconstruction (HEDR) Project Milk Producers Survey—New—OMB approved the information collections for the ''Hanford Thyroid Disease Full Epidemiology Study'' under OMB No. 0920–0296 to determine the health effects to the public from radioactive releases from the Hanford Nuclear Site Operations during the 1940's and 1950's. A primary component of these releases was radioactive iodine. Consumption of fresh milk from cows that have eaten contaminated vegetation and fresh leafy vegetables and eggs from chickens with access to outdoor vegetation are important pathways of radioactive iodine to the human body which adversely affects the thyroid gland. To estimate the doses to the thyroid that individuals and populations could have received, historical milk cow and chicken feeding and distribution practices must be reconstructed for the downwind area. This information is particularly important for use in this ongoing study and its relation to radiation exposures. Researchers from LTG Associates will collect information from a representative sample of individuals who farmed in 7 counties within the study area during the periods of 1945 and 1951.

Respondents	No. of respondents	No. of responses/respondents	Avg. burden/response (in hrs.)
Contact Potential Sources of Names of farmers	50	1	0.16
Initial Contact of Potential Candidates	1,600	1	0.16
Scheduling Interview	400	1	0.08
Telephone Interview	400	1	2

The total annual burden is 1108. Send comments to Allison Eydt; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503.

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–6793 Filed 3–20–96; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 96N–0084]

Agency Emergency Processing Request Under OMB Review

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995. The purpose of the proposed collection of information is to enable FDA to compile lists of U.S. processors that export certain animal-derived foods to the European Community (EC). These lists must be completed by May 1, 1996, to meet EC trade requirements. To meet the EC deadline, FDA is requesting OMB approval by March 28, 1996.

DATES: Submit written comments by March 28, 1996.

ADDRESSES: Submit written comments 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. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Charity B. Smith, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1686.

SUPPLEMENTARY INFORMATION: FDA has requested emergency processing of this proposed collection of information under section 3507(j) of the Paperwork Reduction Act of 1995 and 5 CFR 1320.13 because the information is needed to meet the May 1, 1996, EC deadline; the information is essential to the agency's mission; and public harm is reasonably likely to result if normal clearance procedures are followed.

With respect to the following collection of information, comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of 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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Request for Information from U.S. Processors that Export Shell Eggs, Dairy Products, Game Meat and Game Meat Products to the European Community:

The EC is a group of 15 European countries that have agreed to harmonize their commodity requirements to facilitate commerce among member States. EC legislation for intra-EC trade has been extended to trade with non-EC countries, including the United States. For certain food products, including those listed below, EC legislation requires assurance from the responsible authority of the country of origin that the processor of the food is in compliance with applicable regulatory requirements.

With the assistance of trade associations, FDA intends to request information from processors that export certain animal-derived products (shell eggs, dairy products, game meat and game meat products) to the EC. FDA will use this information to compile lists of processors that meet U.S. requirements and will provide the lists to the EC quarterly. Inclusion on the lists is voluntary. EC member countries will refer to the lists at ports of entry to verify that products offered for importation to the EC from the United States are from processors that meet U.S. regulatory requirements. Products processed by firms not on the processor list are subject to detention and possible refusal at the port. FDA intends to request the following information from each processor:

(1) Business name and address;

(2) Name and telephone number of person designated as business contact;

(3) Lists of products presently being shipped to the EC and those intended to be shipped in the next 2 years;

(4) Name and address of manufacturing plants for each product and;

(5) Names and affiliations of any Federal, State, or local governmental agencies that inspect the plant, government-assigned plant identifier, such as plant number; and last date of inspection.

FDA estimates the burden of the proposed collection of information is as follows:

SHELL EGGS

Estimated Annual Reporting Burden				
No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
25	1	25	0.25	6.25

DAIRY PRODUCTS

Estimated Annual Reporting Burden				
No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
50	1	50	0.25	12.50

GAME MEAT AND GAME MEAT PRODUCTS

Estimated Annual Reporting Burden				
No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
25	1	25	0.25	6.25

There are no capital costs or operating and maintenance costs associated with this collection.

Third Party Disclosure

The following estimate of the burden on trade associations assumes that the trade associations will disseminate FDA's information request through a mass mailing to their membership or publish it in their trade magazine or newsletter:

Estimated Annual Reporting Burden				
No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
12	1	12	8	96

There are no capital costs or operating and maintenance costs associated with this collection.

Dated: March 15, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–6737 Filed 3–18–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96D–0022]

Computer Assisted Product License Application (CAPLA) Guidance Manual (March 1996); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance manual entitled ''Computer Assisted Product License Application (CAPLA) Guidance Manual (March 1996).'' This guidance manual was developed by FDA's Center for Biologics Evaluation and Research (CBER). The manual provides guidance for the submission of computer assisted license applications. The guidance manual is intended to increase the efficiency and quality of the review process for applicants and FDA. The manual also supersedes a previous Points to Consider guidance made available in November 1990.

DATES: Written comments by June 19, 1996.

ADDRESSES: Submit written requests for single copies of the guidance manual entitled ''Computer Assisted Product License Application (CAPLA) Guidance Manual (March 1996)'' to the Division of Congressional and Public Affairs (HFM–11), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send two self-addressed adhesive labels to assist that office in processing your requests. The guidance manual may also be obtained by mail or FAX by calling the Center for Biologics Evaluation and Research Voice Information System at 1–800–835–4709.

Additionally, persons with access to the INTERNET may obtain the guidance manual in several ways. Users of ''Web Browser'' software, such as Mosaic, Netscape, or Microsoft Internet Explorer may obtain this document via the World Wide Web by using the following Uniform Resource Locators:
http://www.fda.gov/cber/cberftp.html
ftp://ftp.fda.gov/CBER/

The document may also be obtained via File Transfer Protocol (FTP). Requesters should connect to FDA's FTP Server, FTP.FDA.GOV (192.73.61.21). CBER's documents are maintained in a subdirectory called ''CBER'' on the server. Logins with the user name of anonymous are permitted, and the user's e-mail address should be sent as the password. The ''READ.ME'' file in that subdirectory describes the available documents which may be available as an ASCII text file (*.TXT), or a WordPerfect 5.1 or 6.x document (*.w51,wp6), or both. Finally, the document can be obtained by ''bounce-back e-mail''. A message should be sent to: ''CAPLA@a1.cber.fda.gov''.

Submit written comments on the guidance manual to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm 1–23, Rockville, MD 20857. Two copies of any comments are to be submitted, except that individuals may submit one copy. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the guidance manual and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Timothy W. Beth, Center for Biologics Evaluation and Research (HFM–630), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION: One of FDA's continuing objectives is to improve the speed and quality of its biologics licensing review and approval program. In order to reach a decision to approve a license application the agency must evaluate all information and data provided by applicants that support the safety, purity, potency, and efficacy of the proposed product. To make the review process more efficient for industry and FDA, CBER is utilizing electronic information systems technology. FDA believes the increased use of CAPLA's and computerization will enhance the timeliness, effectiveness, and efficiency of the biologics review process and reduce burdensome, nonessential hard-copy handling and storage.

In the Federal Register of November 20, 1990 (55 FR 48291), FDA announced the availability of a document entitled ''Points to Consider (PTC): Computer Assisted Submissions for License Applications.'' Since the publication of that document, CBER has gained considerable experience and expertise in the area of electronic information transfer. FDA is announcing in this Federal Register notice a document entitled ''Computer Assisted Product License Application (CAPLA) Guidance Manual (March 1996).'' This new manual supersedes the 1990 PTC document, and should be used as guidance by applicants for electronically submitting license applications or new drug applications (NDA's) to CBER.

A CAPLA is any electronic submission, ranging from a single diskette containing data files to a complete system including custom software and sponsor-owned hardware. Over time, CBER expects CAPLA's will evolve from stand-alone systems to submissions containing just electronic information files, with no applicant provided hardware or software. Applicants should confer with the CBER CAPLA coordinator early in the development of a CAPLA to assess whether it is necessary to include ''commercial off the shelf'' (COTS) software products or custom developed tools to support the CAPLA submission. The manual contains a listings of preferred COTS software and CBER contacts.

The guidance manual provides general information to applicants on the design, development, and submission of CAPLA's. The guidance manual is intended to address the special circumstances to be considered when an applicant electronically submits information in support of a license application; however, the guidance manual does not explain the scientific, clinical, or regulatory aspects of preparing a license application.

The manual is divided into four main sections: (1) Introduction; (2) CAPLA design and development; (3) CAPLA delivery and operations; and (4) CBER's computing environment. The manual also provides information regarding the following topics: Joint planning between the applicant and CBER, cross-platform tools, clinical review, CAPLA guidance for biostatistical review, data presentation formats, communication with CBER, CBER contacts, and license application forms.

The CAPLA guidance manual provides information regarding milestones that the applicant should consider when planning for CAPLA submissions. The following milestones are outlined in the guidance manual: (1) 12 to 18 months before submission: confer on network system requirements; (2) 6 months before submission: confer on CAPLA structure and content; (3) 1 to 3 months before submission: provide demonstration or prototype CAPLA; (4) 30 days before submission: submit

confirmation; and (5) day of submission: provide certifications.

Please note that an accompanying paper submission of the application remains a requirement at this time (21 CFR 601.2 and 601.3). The information in the electronic submission should not differ from the information provided in the paper submission.

As with other guidance documents, FDA does not intend this guidance manual to be all-inclusive. The manual is intended to provide information, not to set forth requirements. Applicants may follow the guidance or may choose to use alternative methods even though they are not provided in the manual. If an applicant chooses to use alternative methods, that applicant is encouraged to discuss the matter further with CBER.

This guidance document is not binding on either FDA or persons submitting biological license applications or NDA's to CBER, and does not create or confer any rights, privileges, or benefits for or on any person.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the guidance manual by June 19, 1996. Received comments will be considered in determining whether further revisions to the guidance manual are warranted. If the CAPLA guidance manual is revised or updated, a notice will be published in the Federal Register announcing its availability.

Dated: March 13, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–6742 Filed 3–20–96; 8:45 am]

BILLING CODE 4160–01–F

Request for Nominations for Members on Public Advisory Committees; Science Advisory Board to the National Center for Toxicological Research

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on the Science Advisory Board (the Board) to the National Center for Toxicological Research (NCTR). Nominations will be accepted for two vacancies that will occur on June 30, 1996.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, encourages nominations for appropriately qualified female, minority, and physically disabled candidates. Final selections from among qualified candidates for each vacancy will be determined by the expertise required to meet specific agency needs and in a manner to ensure appropriate balance of membership.

DATES: Nominations should be received by April 22, 1996.

ADDRESSES: All nominations for membership, except for general public representatives (consumer-nominated members), should be sent to Barbara J. Jewell (address below). All nominations for general public representatives (consumer-nominated members) shall be submitted in writing to Annette J. Funn (address below).

FOR FURTHER INFORMATION CONTACT:

Regarding all nominations for membership, except for general public representatives (consumer-nominated members): Barbara J. Jewell, National Center for Toxicological Research (HFT–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3155.

Regarding all nominations for general public representatives (consumer-nominated members): Annette J. Funn, Office of Consumer Affairs (HFE–88), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5006.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for members to serve on the Board to NCTR. The function of the Board is to advise the Director, NCTR, on establishment and implementation of a research program that will assist in fulfilling the regulatory responsibilities of the Commissioner of Food and Drugs. The Board provides an extra-agency review to ensure that the research programs at NCTR are scientifically sound and pertinent.

Criteria for Members

Persons nominated for membership on the Board shall have adequately diversified experience that is appropriate to the work of the Board in the fields related to toxicological research.

The specialized training and experience necessary to qualify the nominees as experts suitable for appointment are subject to review, but may include experience in medical practice, teaching, and/or research relevant to the field of activity of the Board. The term of office is up to 4 years, depending on the appointment date.

General Public Representatives (Consumer-Nominated Members)

FDA currently attempts to place on committees members who are nominated by consumer organizations. These members are recommended by a consortium of 12 consumer organizations that has the responsibility for screening, interviewing, and recommending consumer-nominated candidates with appropriate scientific credentials. Candidates are sought who are aware of the consumer impact of committee issues, but who also possess enough technical background to understand and contribute to the committee's work. For some advisory committees the agency notes, however, it may require such nominees to meet the same technical qualifications and specialized training required of other expert members of the committee. The term of office for these members is up to 4 years, depending on the appointment date. Nominations are invited for consideration for membership as openings become available.

Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on the Board. Nominations shall state that the nominee is aware of the nomination, is willing to serve as a member of the Board, and appears to have no conflict of interest that would preclude board membership. A current copy of nominee's curriculum vitae should be included. Potential candidates will be asked by FDA to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts in order to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: March 15, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 96–6739 Filed 3–20–96; 8:45 am]

BILLING CODE 4160–01–F

[FDA–225–96–4001]

Memorandum of Cooperation Between the Food and Drug Administration, Mexico, and Canada

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of cooperation (MOC) between the FDA, the Subsecretaría de Regulación y Fomento Sanitario, Mexico, and the Health Protection Branch, Canada. The purpose of the MOC is to expand and strengthen communications among the three governments in the scientific and regulatory fields of health.

DATES: The agreement became effective October 30, 1995.

FOR FURTHER INFORMATION CONTACT: Marilyn E. Veek, Office of International Affairs (HFY–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4480.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and memoranda of cooperation between FDA and others shall be published in the Federal Register, the agency is publishing notice of this memorandum of cooperation.

Dated: March 11, 1996.

Gary J. Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

Memorandum of Cooperation Between the Subsecretaría de Regulación y Fomento Sanitario Secretaría de Salud (SSA) of the United Mexican States and the Food and Drug Administration (FDA), Department of Health and Human Services of the United States of America and the Health Protection Branch (HPB), Health Canada of Canada Regarding Cooperation in the Scientific and Regulatory Fields of Health

Preamble

The Subsecretaría de Regulación y Fomento Sanitario, the Food and Drug Administration and the Health Protection Branch seek to expand and strengthen communications among the three governments in the scientific and regulatory fields of health.

I. Purpose

The Subsecretaría de Regulación y Fomento Sanitario of the Secretaría de Salud (SSA) of the United Mexican States, the Food and Drug Administration (FDA) of the Department of Health and Human Services of the United States of America, and the Health Protection Branch (HPB) of the Department of Health of Canada affirm by this document their intention to strengthen existing mutual cooperation in the scientific and regulatory areas of regulated products, specifically foods (including dietary supplements), drugs (including biologics), cosmetics, medical devices, radiation-emitting electronic products, and related products. The parties intend to enhance, expand, and develop joint efforts to exchange information in health and in regulatory areas related to regulated products and prevention of health fraud related to the following areas:

A. The exchange of information at the earliest feasible stages of investigations into the safety of regulated products.

B. The exchange of information (including, for example, legislation, regulations, proposed amendments, guidelines, and technical documents such as evaluations of foreign suppliers of regulated products and enforcement decisions, including recalls or rejected shipments of products, and training material for regulatory officers) with respect to regulated products.

C. Communication on evaluation of the safety and nutritional quality of food, of the safety, effectiveness, and quality of drugs (including biologics) and medical devices, of the chemical and microbiological safety of cosmetics. The activities are intended to include, for example, communications on clinical protocols, new product approvals, and withdrawal of marketing approval due to concerns about safety, lack of proof of effectiveness, bioequivalence problems, etc.

D. The parties also intend to communicate on the evaluation of the chemical and microbiological safety of foods and cosmetics by exchanging information on chemical and microbiological analytical methods and criteria for safety evaluation.

E. Exchange of information on areas where two or more of the countries regulatory requirements are equivalent, with a view to working toward the development of a common approach in determining compliance status. The participants also intend to discuss their standards with a view toward considering whether it would be appropriate to undertake harmonization activities.

F. Strive through increased dialogue to achieve a common position in meetings of international organizations.

G. Communicate concerning the development of research and monitoring protocols and projects (including, for example, such areas as epidemiology, dietary surveys and health hazard related issues) and pre- and post-market surveillance activities.

H. Communicate concerning the development of programs to increase consumer protection related to health fraud.

II. Specific Plans

As the need arises in areas described in Section I, the participants may develop and agree upon specific plans of cooperation which will be incorporated in written agreements or arrangements.

III. Source of Funding

Each party to the Memorandum of Cooperation intends to fund its own activities subject to the availability of appropriated funds, personnel, and other resources. Any exchange of information or other activity under this Memorandum of Cooperation are to be performed in accordance with applicable laws and regulations.

IV. Participating Parties

A. Subsecretaría de Regulación y Fomento Sanitario, Secretaría de Salud, Lieja 7, 1er. Piso, Col. Juarez, 06696 Mexico, D.F.

B. Food and Drug Administration, Department of Health and Human Services, 5600 Fishers Lane, Rockville, Maryland 20857.

C. Health Protection Branch, Health Canada, Tunney's Pasture, Ottawa, Ontario K1A 0L7.

V. Liaison Officers

A. Coordinador de Asesores, Subsecretaría de Regulación and Fomento Sanitario, Lieja 7, 1er. Piso, Col. Juarez, 06696 Mexico, D.F., (525) 553–73–28 and (525) 553–6979; FAX (525) 553–69–96.

B. Director, International Affairs Staff, Office of External Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4480; FAX (301) 443–0235.

C. Advisor to the Assistant Deputy Minister, Health Protection Branch, Health Canada, Tunney's Pasture, Ottawa, Ontario K1A 0L7, (613) 957–1804; FAX (613) 957–3954.

VI. Duration

Cooperation under this memorandum will commence upon signature of all participants. This memorandum may be revised by mutual written consent of all participants. Cooperation under this memorandum may be terminated upon thirty days advance written notice to the other participants.

For the Food and Drug Administration of the United States of America

Sharon Smith Holston
Title: Deputy Commissioner, External Affairs, FDA
Date: October 30, 1995
Place: Ottawa, Canada

For the Subsecretaría de Regulación y Fomento Sanitario of the United Mexican States

Rafael Camacho Solís
Title: Subsecretario de Regulación y Fomento Sanitario
Date: 30/x/95
Place: Ottawa, Canada

For the Health Protection Branch of Canada

Kent R. Foster
Title: ADM, HPB
Date: 30 October 1995
Place: Ottawa, Canada

[FR Doc. 96–6740 Filed 3–20–96; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed

collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency—s functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Information Collection Requirements contained in BPD–718: Advance Directives (Medicare and Medicaid); *Form No.:* HCFA-R–10; Use: Certain Medicare and Medicaid organizations are responsible for collecting and documenting, in medical records, whether or not an individual has executed an advance directive, this document indicates the individual—s preference if he/she is incapacitated. Frequency: On occasion; Affected Public: Business or other for-profit, Not-for-profit institutions, Federal government, and State, local or tribal government; *Number of Respondents:* 38,927; *Total Annual Responses:* 38,927; *Total Annual Hours Requested:* 908,250.

To request copies of the proposed paperwork collections referenced above, call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address:

HCFA, Office of Financial and Human Resources, Management Planning and Analysis Staff, Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850

Dated: March 13, 1996.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources.

[FR Doc. 96–6751 Filed 3–20–96; 8:45 am]

BILLING CODE 4120–03–P

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) this notice is publishing the following summaries of proposed collections for public comment. The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing 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 Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Video Display Terminal (VDT) Operators Eye Care Program; *Form No.:* HCFA–81; *Use:* This form is needed to gather information necessary to process employees' request to participate in the VDT Operators' Eye Care Program. Part of the form will be completed by HCFA employees and their supervisors. Another part of the form is completed by personal eye care practitioners and opticians providing services to HCFA employees; *Frequency:* On occasion; *Affected Public*: Business or other for profit, Individuals or households, Federal Government; *Number of Respondents:* 500; *Total Annual Responses:* 500; *Total Annual Hours Requested* 2,000.

2. *Type of Information Collection Request:* Reinstatement, with change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Attending Physicians Statement and Documentation of Medical Emergency; *Form No.:* HCFA–1771; *Use:* This form is used to document the attending physician's statement that the hospitalization was required due to an emergency and give clinical support for the claim; *Frequency:* On occasion; *Affected Public:* Business or other for profit; *Number of Respondents:* 1,700; *Total Annual Responses:* 1,700; *Total Annual Hours Requested* 425.

To request copies of the proposed paperwork collection referenced above, call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Planning and Analysis Staff, Attention: Zaneta Davis, 7500 Security Boulevard, Room C2–26–17 Baltimore, Maryland 21244–1850.

Dated: March 14, 1996.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff.

[FR Doc. 96–6757 Filed 3–20–96; 8:45 am]

BILLING CODE 4120–03–P

Public Information Collection Requirements Submitted for Public Comment and Recommendations

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summaries of proposed collections for public comment. Interested persons are invited to send comments regarding 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 Information Collection Request:* Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Information Collection Requirements in Final Peer Review Organization Sanction Regulations, 42 CFR 1004.40(b), 1004.50(g), 1004.60(b), and 1004.70 (b) and (c); *Form No.:* HCFA–R–65; *Use:* This rule revises and updates the procedures governing the imposition and adjudication of program sanctions predicated on recommendations of State Utilization and Quality Control Peer Review Organizations (PROs). These changes are being made as a result of

statutory revisions designed to address health care fraud and abuse issues and the Office of Inspector General sanction process; *Frequency:* On Occasion; *Affected Public:* Business or other for profit; *Number of Respondents:* 53; *Total Annual Hours:* 22,684.

2. *Type of Information Collection Request:* Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Post-Certification Revisit Form; *Form No.:* HCFA–2567B; *Use:* This form is used to collect deficiency correction status information pursuant to the Clinical Laboratory Improvement Amendments of 1988 and the Medicare/Medicaid certification requirements of P.L.100–578 and sections 1864 and 1902 of the Social Security Act; *Frequency:* Annually; *Affected Public:* Business or other for profit, State, Local, or Tribal Governments; *Number of Respondents:* 72,000; *Total Annual Hours:* 61,000.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.ssa.gov/hcfa/hcfahp2.html, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Planning and Analysis Staff, Attention: John Burke, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

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. 96–6818 Filed 3–20–96; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: National Biological Service, Midcontinent Ecological Science Center, Fort Collins, CO, PRT–812383

The applicant requests a permit to export liver samples from dead captive-born black-footed ferret (*Mustela nigripes*) to Department of Biology, University of Leeds, Leeds, England for genetic analysis for the purpose of benefiting the species in the wild.

Applicant: Bass Pro Outdoor World, Springfield, MO, PRT–801339

The applicant requests a permit to purchase in interstate commerce one bontebok (*Damiliscus pygarus dorcas*) and one Mountain zebra (*Equus zebra zebra*) trophy for the purpose of enhancement for the survival of the species through conservation education.

Applicant: Russell H. Underdahl, North Oaks, MN, PRT–812362

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) from Namibia for the purpose of enhancement of the survival of the species.

Applicant: Lawrence B. Carlson, Anoka, MN, PRT–811919

The applicant requests a permit to import a sport-hunted leopard (*Panthera pardus*) from Cameroon for the purpose of enhancement of the survival of the species.

Applicant: Jim Deal, Anoka, MN, PRT–811998

The applicant requests a permit to import a sport-hunted leopard (*Panthera pardus*) from Cameroon for the purpose of enhancement of the survival of the species.

Applicant: Regional Director, Region 2, U. S. Fish & Wildlife Service, Albuquerque, NM, PRT–812381

The applicant requests a permit to import eggs from whooping cranes (*Grus americana*) located in Wood Buffalo National Park, Northwest Territories, Canada for the purpose of enhancement of the species through captive-breeding.

Applicant: Sea World, Inc., Orlando, FL, PRT–812385

The applicant requests a permit to import 3 captive-held hawksbill sea turtles (*Eretmochelys imbricata*) from London Zoo, London, England for the purpose of enhancement of the species through conservation education.

Applicant: John Saltzman, Kenner, LA, PRT–812191

The applicant requests a permit to import a sport-hunted trophy of a male bontebok (*Damaliscus pygarus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Jeheskel Shoshani, Detroit, MI, PRT–811937

The applicant request a permit to import the fetus of a preserved Asian elephant (*Elephas maximus*) born in captivity from the African Lion Safari in Ontario, Canada for the purpose of the survival of the species through scientific research.

Applicant: Wildlife Conservation Society, Bronx, NY, PRT–811776

The applicant request a permit to import dropped feathers taken from wild and captive born birds from various international institutions and collections occurring from field studies for the purpose of the survival of the species through scientific research.

Applicant: Duke University Primate Center, Durham, NC, PRT–812378

The applicant requests a permit to import one male Aloatran bamboo lemur (*Hapalemur griseus alaotrensis*) from the Jersey Wildlife Preservation Trust for the purpose of scientific research and enhancement of the survival of the species through propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: March 15, 1996.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 96–6783 Filed 3–20–96; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[WO–880–9500–00–24 1A]

Extension of Approved Information Collection; OMB Number 1004–0109

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is announcing its intention to request renewal of approval to collect certain information from the Governors of States to allow the BLM to compute units of payments due to local governments. The Payments in Lieu of Taxes (PILT) Act of September 13, 1982, as amended, requires that the Governor of each State furnish BLM with a listing of payments that have been made to local governments by the State on behalf of the Federal government under eleven receipt-sharing statutes. This information helps local governments recover some of the expenses they incur by providing services on public lands.

DATES: Comments on the proposed information collection must be received by May 20, 1996, to be assured of consideration.

ADDRESSES: Comments may be mailed to: Regulatory Management Team (420), Bureau of Land Management, 1849 C Street NW., Room 401LS, Washington, D.C. 20240.

Comments may be sent via Internet to: !WO140@attmail.com. Please include ''ATTN: 1004–0109'' and your name and return address in your Internet message.

Comments may be hand-delivered to the Bureau of Land Management Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Bill Howell, Budget and Finance Team, (202) 452–7721.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.12(a), BLM is required to provide 60-day notice in the Federal Register concerning a collection of information contained in a published current rule to solicit comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. BLM will receive and analyze any comments sent in response to this notice and include them with its request for approval from the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

BLM makes payments in lieu of taxes (PILT) to units of local government for certain Federal lands within their boundaries through authority provided by the Payment in Lieu of Taxes Act of October 20, 1976 (90 Stat. 2662, 31 U.S.C. 6901–6907). The implementing regulations are found at 43 CFR Subpart 1881—Payments in Lieu of Taxes. The regulations were issued on September 29, 1977 (35 FR 51580), amended on July 15, 1980 (45 FR 47619), and last amended on January 10, 1985 (50 FR 1305). The Governor of each State or his agent must furnish BLM with a listing of payments that have been made to local governments by the State on behalf of the Federal government under eleven revenue-sharing laws specified at 31 U.S.C. 6903(a)(1). BLM provides the States with a printout matrix designed to facilitate recording the requested information. Each printout lists each qualifying unit of local government down the left hand side of the page along with the unit of local government code used by the Census Bureau. Across the top of the printouts are columns which indicate each of the revenue acts. BLM uses the information provided by the States to compute the PILT payments to local governments within the State.

Based on BLM's experience in administering PILT, BLM estimates the State reporting burden for this information collection to average 20 hours. The respondents already maintain this information for their own record-keeping purposes and need only transfer it to the matrix described above. The estimate includes time for research, time to transcribe and audit the data, and time to prepare the PILT submission. The respondents are offices designated by the Governor of each State, usually the Treasurer's office. The frequency of response is once annually, reporting on the previous fiscal year's revenues. The number of responses per year is 50. The estimated total annual burden on the States collectively is about 1,000 hours.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: March 15, 1996.

Annetta L. Cheek,

Chief, Regulatory Management Team.

[FR Doc. 96–6776 Filed 3–20–96; 8:45 am]

BILLING CODE 4310–84–P

[WO–320–1330–01–24 1A]

Extension of Currently Approved Information Collection; OMB Approval Number 1004–0121

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is announcing its intention to request extension of approval for the collection of information from applicants to lease solid minerals other than coal and oil shale. The information supplied allows BLM to determine whether an applicant, permittee, or lessee is qualified to hold an interest under the terms of the Mineral Leasing Act of 1920 (MLA).

DATES: Comments on the proposed information collection must be received by May 20, 1996, to be considered.

ADDRESSES: Comments may be mailed to: Regulatory Management Team (420), Bureau of Land Management, 1849 C Street NW., Room 401 LS, Washington, D.C. 20240.

Comments may be sent via Internet to: !WO140@attmail.com. Please include ''ATTN: 1004–0121'' and your name and return address in your Internet message.

Comments may be hand delivered to the Bureau of Land Management Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Patrick J. Sheehy, (202) 452–0350.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.12(a), BLM is required to provide a 60-day notice in the Federal Register concerning a collection of information contained in published current rules to solicit comments on (a) whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

BLM plans to seek from the Office of Management and Budget extension of approval for the information collection requirements in 43 CFR Parts 3500 through 3580, which cover the leasing of solid minerals other than coal and oil shale. These regulations implement the statutory authority governing leasing activities on Federal lands which is found in the Mineral Leasing Act of 1920 (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947 (30 U.S.C. 351–359), Section 402 of Reorganization Plan No. 3 of 1946 (5 U.S.C. Appendix 1031), the Multiple Mineral Development Act of 1954 (30 U.S.C. 521–531), the National Environmental Policy Act of 1969 (42 U.S.C. 4321), and the Federal Land Policy and Management Act of 1967 (43 U.S.C. 1701 et seq.).

The implementing regulations outline procedures for members of the public to submit applications, offers, statements, petitions, and various forms. The information required in the applications, statements and petitions is needed by BLM to determine applicant qualifications to hold a lease to obtain a benefit under the terms of the MLA and its subsequent amendments and the regulations. Information collection requirements are based on the statutory requirements concerning the qualifications and eligibility to hold title to or interest in Federal mineral leases and on the regulatory requirements relating to the identification, location and quality of minerals under application and identification of proposed operational activities. The affected public consists of all prospective holders of Federal non-energy leases, prospecting permits, use permits, and exploration licenses.

BREAKDOWN OF INFORMATION COLLECTIONS AND TOTAL HOURS

Type of Information collection	No. of responses	Hours per response	Total hours
Prospecting Permit (Form 3510–1)	325	5/6	271
Exploration plan for Prospecting Permit	250	10	2,500
Prospecting Permit Extension	125	1	125
Preference Right Lease (Form 3520–7)	25	10	250
Competitive Lease Bids	12	1	12
Fringe acreage/Lease Modification	10	2	20
Assignments/Sublease	50	2	100
Lease Renewals/Adjustments	30	2	60
Use Permit (Form 3510–2)	6	2	12
Exploration License	10	3	30
Development Contract	3	3	9
Bonding (Forms 3504–1, 3 and 4)	400	5/6	333
	.....	.....	.....
Total	1,246	.....	3,722

Based on its experience administering the leasing program, BLM estimates that it will take an average of about three hours to complete the applications, petitions, offers and statements required. The applicants will have access to records, plats and maps necessary for providing legal land descriptions. The type of information necessary is outlined in the regulations and is already maintained by the respondents for their own recordkeeping purposes and needs only to be compiled in a reasonable format. The estimate also includes the time required for assembling the information, as well as the time of clerical personnel, if needed.

BLM estimates that approximately 1,246 filings will be made annually for a total of 3,722 reporting hours. Respondents vary from individuals to small businesses and major corporations.

Any interested member of the public may request and obtain, without charge, copies of any of forms listed in this notice by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become part of the public record.

Dated: March 15, 1996.

Annetta L. Cheek,

Chief, Regulatory Management Team.

[FR Doc. 96–6777 Filed 3–20–96; 8:45 am]

BILLING CODE 4310–84–P

[AZ–025–1430–00; AZA 8177]

Termination of Classification and Opening of Lands to Entry in Mohave County, Arizona

AGENCY: Bureau of Land Management Interior.

ACTION: Notice.

SUMMARY: This Notice will open 60 acres to location and entry under the public land laws and general mining laws.

EFFECTIVE DATE: April 22, 1996.

FOR FURTHER INFORMATION CONTACT: Joyce Bailey, Realty Specialist, Kingman Resource Area, 2475 Beverly Avenue, Kingman, Arizona 86401, telephone (520) 757–3161.

SUPPLEMENTARY INFORMATION: The following described lands were classified on March 11, 1975, under the

provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*), for 12 trash pickup sites. The lease was issued October 1, 1975, and relinquished March 18, 1988. Following field examination, the relinquishment was accepted July 27, 1995. The classification is no longer needed:

Gila and Salt River Merdian, Arizona

T. 16 N., R. 13 W.,
Sec. 21, S½SW¼SE¼SW½.
T. 23 N., R. 13 W.,
Sec. 30, E½NE¼NE¼NE½.
T. 24 N., R. 14 W.,
Sec. 30, W½SE¼SE¼SW¼.
T. 20 N., R. 17 W.,
Sec. 6, N½NE¼NE¼SE¼.
T. 21 N., R. 17 W.,
Sec. 18, por. lot 1 (N½NW¼NW¼NW¼).
T. 29 N., R. 17 W.,
Sec. 10, S½SE¼SE¼SE¼.
T. 17 N., R. 18 W.,
Sec. 24, E½SE¼NE¼NE¼.
T. 23 N., R. 18 W.,
Sec. 9, por. lot 4 less patented mining claim (E½NE¼NE¼SE¼).
T. 19 N., R. 19 W.,
Sec. 14, N½SE¼NW¼NW¼.
T. 21 N., R. 19 W.,
Sec. 2, S½SE¼SW¼SE¼.
T. 19 N., R. 20 W.,
Sec. 27, W½SW¼SW¼NW¼.
T. 18 N., R. 21 W.,
Sec. 29, S½SW¼SW¼SW¼.

The areas described aggregate 60 acres.

At 9 a. m. on April 22, 1996, the classification on the lands described above will be terminated and the lands will be open to location and entry under the United States mining laws and public land laws.

Dated: March 5, 1996.

Mary Jo Yoas,

Chief, Lands and Minerals Operations .

[FR Doc. 96–6814 Filed 3–20–96; 8:45 am]

BILLING CODE 4310–32–P

[MT–070–1430–01; MTM81959]

Notice of Realty Action: Recreation and Public Purposes (R&PP) Act Classification; Beaverhead County, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands in Beaverhead County, Montana, have been examined and found suitable for classification for lease or conveyance to the State of Montana under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The State of Montana proposes to use the lands for inclusion into the Bannack State Park and Historical Area.

Principal Meridian Montana

T. 8 S., R. 11 W.,
Sec. 5, Lots 4, 7, 8, SWNW, NWSW,
Sec. 6, Lots 1–9, 11, S2NE, SENW,
Sec. 7, Lots 1, 4, 5, 6, 9, 11, 14, 16, 17, N2NESW, N2NWNWSE,
Sec. 8, Lots 4, 5, 6,
T. 8 S., R. 12 W.,
Sec. 1, Lot 6,
Sec. 12, E2NE,

Containing 958.24 acres more or less.

The lands are not needed for Federal purposes. Lease and/or conveyance is consistent with current BLM land use planning and would be in the public interest. A lease will be issued for those lands which may be encumbered. For those lands which are not encumbered or become unencumbered, a patent will be issued. The lease or patent, 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 the minerals.

4. The lands will be conveyed subject to all valid, existing rights (e.g., rights-of-way, easements and leases of record).

Furthermore, the decision is to revoke Executive Order dated April 15, 1930, insofar as it affects 958.24 acres of public land withdrawn for Oil-Shale Deposits under the authority of the act of Congress approved June 25, 1910 (36 Stat. 847), as amended by the act of August 24, 1912 (57 Stat. 497), and to revoke Public Land Order 5739 dated July 22, 1980, in its entirety insofar as it affects 305 acres of public land withdrawn under the authority of Section 204 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2751; 43 U.S.C. 1714).

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Dillon Resource Area, 1005 Selway Drive, Dillon, Montana 59725–9431.

SUPPLEMENTARY INFORMATION: Upon publication of this notice in the Federal Register, the lands will be segregated from all other forms of appropriation under the public land laws, 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 classification of the lands, the proposed lease/conveyance, or the revocation of existing withdrawals to the District Manager, Butte District Office, 106 North Parkmont, Box 3388, Butte, Montana 59702–3388.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a State Park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a State Park.

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.

Dated: March 12, 1996.

James R. Owings,

District Manager.

[FR Doc. 96–6812 Filed 3–20–96; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Application for Certificate of Citizenship in Behalf of an Adopted Child.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days from the date listed at the top of this page in the Federal Register.

Request written comments and suggestions from the public and affected

agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–616–7600, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Certificate of Citizenship in Behalf of an Adopted Child.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–643. Office of Examinations, Adjudications Division, Immigration and Naturalization Service, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. Other: None. The information collected is used to allow U.S. citizen parents to apply for a certificate of citizenship on behalf of their adopted alien children.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 8,000 responses at one hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 8,000 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: March 14, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–6784 Filed 3–20–96; 8:45 am]

BILLING CODE 4410–10–M

National Institute of Corrections

Meeting Announcement

A meeting of the Task Force on Prison Construction Standardization and Techniques will be held on April 3, 1996, at the National Institute of Corrections offices, 500 First Street, NW., Washington, DC 20534. The meeting will convene at 9:00 am and adjourn at 4:00 pm. The purpose of the meeting will be to discuss the scope of work to be done by the Task Force and identify specific projects. No part of the meeting will be closed.

For more information contact Dee Halley, National Institute of Corrections, Academy Division, 1960 Industrial Circle, Suite A, Longmont, CO 80501; 1–800–995–6429 or fax 1–303–682–0469.

Morris Thigpen,

Director.

[FR Doc. 96–6819 Filed 3–20–96; 8:45 am]

BILLING CODE 4410–36–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 96–030]

NASA Advisory Council, Earth Systems Science and Applications Advisory Committee (ESSAAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Earth Systems Science and Applications Advisory Committee.

DATES: April 19, 1996, 8:30 a.m. to 6:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, Conference Room 7H46, 300 E Street, S.W., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Robert A. Schiffer, Code YS, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–1876.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The provisional agenda for the meeting is as follows:

—Update of Mission to Planet Earth
—Future Directions for MTPE Science and Response to Key ESSAAC Recommendations
—Integrated Global Observing System Planning
—EOSDIS Restructuring
—NASA Center Views on MTPE Science Planning—Seasonal-to-Interannual Climate Variability Research
—Perspective on Future Role of ESSAAC
—Committee Discussion

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: March 13, 1996.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 96–6829 Filed 3–20–96; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL COMMUNICATIONS SYSTEM

Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee

AGENCY: National Communications Systems (NCS).

ACTION: Notice of meeting.

SUMMARY: A meeting of the Industry Executive Subcommittee of the President's National Security Telecommunications Advisory Committee will be held on Thursday, March 21, 1996, from 9:00 a.m. to 12:00 noon. The meeting will be held at Booz,

Allen & Hamilton, 8283 Greensboro Drive, McLean, VA. The agenda is as follows:

—Call to Order/Welcoming Remarks
—Manager's Report
—National Information Infrastructure Report
—Network Security Group Report
—Information Assurance Task Force Report
—National Security and Emergency Preparedness Group Report
—Standards Liaison Group Report
—Legislative and Regulatory Group Report
—Issues Group Report
—Adjournment

Due to the requirement to discuss classified information, in conjunction with the issues listed above, the meeting will be closed to the public in the interest of National Defense.

FOR FURTHER INFORMATION CONTACT: Telephone (703) 607–6221 or write the Manager, National Communications System, 701 S. Court House Rd., Arlington, VA 22204–2198.

Dennis Bodson,

Chief, Technology and Standards.

[FR Doc. 96–6752 Filed 3–20–96; 8:45 am]

BILLING CODE 5000–03–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Scientific Computing; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Advanced Scientific Computing (#1185).

Date and Time: April 8, 1996, 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Suite 1150, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. John Van Rosendale, Program Director, New Technologies Program, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1962.

Purpose of Meeting: To provide recommendations and advice concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals in the ''New Millenium'' Point Design Studies as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 18, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–6844 Filed 3–20–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), in the National Science Foundation announces the following meeting:

Name and Committee Code: Special Emphasis Panel in Biological Sciences (1754).

Date and Time: April 10, 1996, 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Rm. 380, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Machi F. Dilworth, Program Director, NSF/DOE/USDA Arabidopsis Genome Sequencing Program, Room 685, National Science Foundation, 4201 Wilson Boulevard, VA 22230, Telephone (703) 306–1422.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted in response to the NSF/DOE/USDA Arabidopsis Genome Sequencing Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information and personal information on individuals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 18, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–6845 Filed 3–20–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—(61).

Date and Time: April 8–9, 1996, 8:30 a.m.–5:00 p.m.

Place: Room 310, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Sara B. Nerlove, Program Manager, SBIR Office, (703) 306–1391 and Dr. Donald E. Jones, Program Manager, EHR/DUE, (703) 306–1613, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate ESIE/DUE Phase II proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 18, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–6846 Filed 3–20–96; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Education and Human Resources; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Education and Human Resources.

Date and Time: April 3, 1996, 10:15 a.m.; April 4, 1996, 8:30 a.m.

Place: Arlington Renaissance Hotel, 950 N. Stafford Street, Arlington, VA 22203.

Type of Meeting: Open.

Contact Person: Peter E. Yankwich, Executive Secretary, Directorate for Education and Human Resources, Room 830, Arlington, VA 22230, (703) 306–1670.

Summary Minutes: May be obtained from contact person listed above.

Purpose of Committee: To provide advice and recommendations concerning NSF support for Education and Human Resources.

Agenda: Review of FY 1995 Programs and Initiative. Strategic Planning for FY 1996 and Beyond.

Dated: March 18, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–6847 Filed 3–20–96; 8:45 am]

BILLING CODE 7555–01–M

Federal Networking Council Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Federal Networking Council Advisory Committee Meeting (1177).

Date and Time: April 8, 1996; 1:00 p.m. to 6:00 p.m. and April 8, 1996; 8:30 a.m. to 6:00 p.m.

Place: Room 1235.

Type of Meeting: Open.

Contact Person: Ms. Julie Walker, Coordinator, Federal Networking Council, DynCorp ATS, 4001 N. Fairfax Drive, Suite 200, Arlington, VA 22203–1614, Telephone: (703) 522–6410, Fax: (703) 522–7161. Internet: walkerj@snap.org.

Purpose of Meeting: The purpose of this meeting is for the Advisory Committee to provide the Federal Networking Council (FNC) with technical, tactical, and strategic advice, concerning policies and issues raised in the implementation and deployment of the National Research and Education Network (NREN) Program.

Agenda: Network Transition and Scalability, Internet Privacy and Security, Intellectual Property Rights (IPR), and Education.

Luncheon: There is no fee to attend this meeting. However, attendees who register in advance may order refreshments and/or a box lunch for which there will be a charge. To obtain a registration form, contact Ms. Walker by telephone, fax or electronic mail at the number or address above. Forms must be received by March 28, 1996.

Dated: March 18, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–6848 Filed 3–20–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel for Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel for Geosciences (1756).

Date: April 10 through 12, 1996.

Time: 7:30 a.m. to 9:00 p.m. each day.

Place: Rooms 730 & 770, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Maryellen Cameron, Program Director, Petrology and Geochemistry Program, Division of Earth Sciences, Room 785, National Science Foundation, Arlington, VA 22230, (730) 306–1554.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate environmental geochemistry and biochemistry proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 18, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–6849 Filed 3–20–96; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Mathematical and Physical Sciences; Subcommittee of the Advisory Committee for Mathematical and Physical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Mathematical and Physical Sciences (#6) Subcommittee of the Advisory Committee for Mathematical and Physical Sciences.

Date and Time: April 8–10, 1996; 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Thomas A. Weber, Division Director, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone (703) 306–1811.

Purpose of Meeting: To provide oversight review of the Division of Materials Research programs, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: Perform functions of the Committee of Visitors (COV), (see ''Purpose of Meeting'', above), and to prepare COV Reports of their findings of the divisional programs.

Reason for Closing: The proposals being reviewed including information of a proprietary or confidential nature, include technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 18, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–6850 Filed 3–20–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Physics (#1208).

Date: April 9 through 11, 1996.

Place: Bridge Annex, California Institute of Technology, 1201 E. California Boulevard, Pasadena, California.

Type of Meeting: Closed.

Contact Person: Dr. David Berley, Program Manager, Laser Interferometer Gravitational Observatory, Physics Division, Room 1015, National Science Foundation, 4201 Arlington Blvd., Arlington, VA 22230. Telephone: (703) 306–1892.

Purpose of Meeting: To review the cost, schedule, and management of the Laser Interferometer Gravitational-Wave Observatory (LIGO) project and to assess the actions taken on issues raised in previous reviews.

Agenda: To evaluate the current cost estimate, schedule, and to review the project management.

Reason for Closing: The Project plans being reviewed include information of a proprietary or confidential nature, including technical information; information on personnel and proprietary data for present and future subcontracts. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 18, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–6851 Filed 3–20–96; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Physiology and Behavior; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

Name: Advisory Panel for Physiology and Behavior (#1160)

Date and Time: April 10 and 11, 1996, 8 a.m.–6 p.m.

Place: Room 390, 4201 Wilson Boulevard, Arlington, Virginia 22230

Type of Meeting: Part-Open

Contact Person: Dr. Elvira Doman and Dr. John Fray, Program Directors, Integrative Animal Biology, Division of Integrative Biology and Neuroscience, room 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. Telephone: (703) 306–1421.

Minutes: May be obtained from the contact persons listed above.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Open Session: April 11, 2 p.m.–3 p.m.: Discussion with Dr. Mary Clutter, Assistant Director, Directorate for Biological Sciences. To discuss research trends and opportunities in biology.

Closed Session: April 10, 8 a.m.–6 p.m., April 11, 8 a.m–2 p.m., 3 p.m.–6 p.m. To review and evaluate Integrative Animal Biology proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a

proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 18, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–6852 Filed 3–20–96; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Physiology and Behavior; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name: Advisory Panel for Physiology and Behavior.

Date and Time: April 10th through 12th, 1996; 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, Room 370, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Part-open.

Contact Person: Dr. James Coleman, Program Director, Ecological & Evolutionary Physiology, Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1421.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact person listed above.

Agenda: Open Session: April 12th, 1996; 9:30 p.m. to 10:30 p.m.—for a discussion on research trends and opportunities assessment procedures in Ecological and Evolutionary Physiology.

Closed Session: April 10th and 11th, 8:30 a.m. to 5:00 p.m.; April 12th 8:00 a.m. to 9:30 a.m. and 10:30 a.m. to 5:00 p.m. To review and evaluate Ecological & Evolutionary Physiology proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 18, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–6853 Filed 3–20–96; 8:45 am]

BILLING CODE 7555–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36975; File No. SR–CSE–96–01]

Self-Regulatory Organizations; The Cincinnati Stock Exchange; Order Granting Approval to Proposed Rule Change Relating to Clearance Identification Procedures for Members

March 14, 1996.

On January 16, 1996, The Cincinnati Stock Exchange (''CSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to require that members give up only their own or another CSE member's clearing number when executing a transaction on the Exchange.

The proposed rule change was published for comment in the Federal Register on February 9, 1996.[3] No comments were received on the proposal.

The Exchange proposes to add a third policy/interpretation to Article II, Section 5.1 of its by-laws. This policy would require the Exchange's members to give up only their own or another CSE member's clearing number when executing a transaction on the Exchange. The Exchange reasons that this requirement would ensure that the CSE has jurisdiction over all of the parties involved in executing and settling trades that occur on the Exchange.

The Exchange proposes to place this requirement in Article II, Section 5.1 of its by-laws (''Restrictions on Admittance to or Continuance in Membership Association'') instead of Chapter XIII, Rule 13.1 of its rules (''Comparison and Settlement Requirements'') because, in the CSE's opinion, this requirement is a condition of membership being placed on existing members, and it does not impact the Exchange's procedures regarding the comparison and settlement of trades.[4]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[5] Specifically the Commission believes the proposal is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts, to foster cooperation and coordination with persons engaged in clearing, settling, and processing information with respect to transactions in securities and, in general, to protect investors and the public interest.

The Commission agrees that this give up requirement should ensure that the CSE may exercise jurisdiction over all of the parties involved in executing, clearing, and settling trades that occur on the Exchange. In turn, this should enhance the Exchange's ability to resolve issues involving the clearance and settlement of transactions that occur on the Exchange.[7]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CSE–96–01) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–6763 Filed 3–20–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36973; File No. SR–NASD–95–39, Amendment No. 3]

Self-Regulatory Organizations; Notice of Amendment No. 3 to Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Application of the Rules of Fair Practice to Transactions in Exempted Securities and an Interpretation of Its Suitability Rule

March 14, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 18, 1995, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change regarding the application of the Rules of Fair Practice to transactions in exempted securities and an interpretation of the NASD's suitability

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 36810 (Feb. 5, 1996), 61 FR 5050.

[4] *See* Letter dated February 12, 1996, from Robert P. Ackermann, Vice President, Regulatory Services, CSE, to Glen Barrentine, Senior Counsel/Team Leader, SEC.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] The Commission notes that this requirement is similar to New York Stock Exchange, Inc. Rule 138 and American Stock Exchange, Inc. Rule 104.

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

rule.[1] On October 17, 1995, the NASD filed Amendment No. 1 to the proposed rule change. The Commission solicited comments on the proposed rule change and Amendment No. 1 from interested persons on October 24, 1995.[2] On January 22, 1996, the NASD filed Amendment No. 2 to the proposed rule change,[3] and on February 15, 1996, replaced Amendment No. 2 with Amendment No. 3. to the proposed rule change.[4] Amendment No. 3 is described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the amendments to the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Below is the text of proposed changes to the original proposal. Proposed new language is italicized and deletions are in brackets.

Interpretation of the Board of Governors Prompt Receipt and Delivery Interpretation

* * * * *

(b) Sales:

(1) Long Sales.

No member or persons associated with a member shall accept a long sale order from any customer in any security *(except exempt securities other than municipals)* unless:

(A) The member has possession of the security;

(B) The customer is long in his account with the member;

(C) The member or person associated with a member makes an affirmative determination that the customer owns the security and will deliver it in good deliverable form within three (3) business days of the execution of the order; or

(D) The security is on deposit in good deliverable form with a member of the Association, a member of a national securities exchange, a broker-dealer registered with the Securities and Exchange Commission, or any organization subject to state or federal banking regulations and that instructions have been forwarded to that depository to deliver the securities against payment.

* * * * *

Recommendations to Customers

Sec. 2. (a) In recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.

(b) Prior to the execution of a transaction recommended to a non-institutional customer, other than transactions with customers where investments are limited to money market mutual funds, a member shall make reasonable efforts to obtain information concerning:

(i) the customer's financial status;

(ii) the customer's tax status;

(iii) the customer's investment objectives; and

(iv) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

For purposes of this subsection 2(b), the term ''non-institutional customer'' shall mean a customer that does not qualify as an ''institutional account'' under Article III, Section 21(c)(4) of the Rules of Fair Practice.

Interpretation of the Board of Governors

Suitability Obligations to Institutional Customers

Preliminary Statement as to Members' Obligations

As a result of broadened authority provided by amendments to the Government Securities Act adopted in 1993, the Association is extending its sales practice rules to the government securities market, a market with a particularly broad institutional component. Accordingly, the Board believes it is appropriate to provide further guidance to members on their suitability obligations when making recommendations to institutional customers. The Board believes this Interpretation is applicable not only to government securities but to all debt securities, excluding municipals.[1] Furthermore, because of the nature and characteristics of the institutional customer/member relationship, the Board is extending this Interpretation to apply equally to the equity securities markets as well.

The NASD's suitability rule is fundamental to fair dealing and is intended to promote ethical sales practices and high standards of professional conduct. Members' responsibilities include having a reasonable basis for recommending a particular security or strategy, as well as having reasonable grounds for believing the recommendation is suitable for the customer to whom it is made. Members are expected to meet the same high standards of competence, professionalism, and good faith regardless of the financial circumstances of the customer.

Article III, Section 2(a) requires that,

In recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.

This Interpretation concerns only the manner in which a member determines that a recommendation is suitable for a particular institutional customer. The manner in which a member fulfills this suitability obligation will vary depending on the nature of the customer and the specific transaction. Accordingly, this Interpretation deals only with guidance regarding how a member may fulfill such ''customer-specific suitability obligations'' under Article III, Section 2(a) of the Rules of Fair Practice.[2]

While it is difficult to define in advance the scope of a member's suitability obligation with respect to a specific institutional customer transaction recommended by a member, the Board has identified certain factors which may be relevant when considering compliance with Article III,

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[1] A draft of the proposed Suitability Interpretation contained in the proposed rule change was first published for comment in Notice to Members 94–62 (August 1994) (''NTM 94–62''). The proposed Suitability Interpretation published in NTM 94–62 was revised, and a second draft was published for comment in Notice to Members 95–21 (April 1995) (''NTM 95–21''). Copies of NTM 94–62 and NTM 95–21 are included in File No. SR–NASD–95–39 as Exhibits 2 and 4 to the original rule filing respectively.

[2] *See* Securities Exchange Act Release No. 36383 (October 17, 1995), 60 FR 54530 (October 24, 1995). The Commission received nine comment letters in connection with the proposed rule change. *See infra* note 5.

[3] *See* letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark P. Barracca, Branch Chief, SEC, dated January 22, 1996.

[4] Amendment No. 2 responded to some of the comments received on the proposed rule change. Amendment No. 3 expands upon the discussion contained in Amendment No. 2 by including responses to all of the comment letters received on the proposed rule change. Amendment No. 3 to SR–NASD–95–39 completely replaces and supersedes Amendment No. 2. *See* letters from Joan C. Conley, Secretary, NASD, to Mark P. Barracca, Branch Chief, SEC, dated February 15, 1996, and March 4, 1996.

[1] Rules for municipal securities are promulgated by the Municipal Securities Rulemaking Board.

[2] This Interpretation does not address the obligation related to suitability that requires that a member have ''. . . a 'reasonable basis' to believe that the recommendation could be suitable for at least some customers.'' In the Matter of the Application of F.J. Kaufman and Company of Virginia and Frederick J. Kaufman, Jr., 50 SEC 164 (1989).

Section 2(a) of the Rules of Fair Practice. These factors are not intended to be requirements or the only factors to be considered but are offered merely as guidance in determining the scope of a member's suitability obligations.

Considerations Regarding the Scope of Members' Obligations to Institutional Customers

The two most important considerations in determining the scope of a member's suitability obligations in making recommendations to an institutional customer are the customer's capability to evaluate investment risk independently and the extent to which the customer [intends to exercise] *is exercising* independent judgment in evaluating a member's recommendation. A member must determine, based on the information available to it, the customer's capability to evaluate investment risk. In some cases, the member may conclude that the customer is not capable of making independent investment decisions in general. In other cases, the institutional customer may have general capability, but may not be able to understand a particular type of instrument or its risk. This is more likely to arise with relatively new types of instruments, or those with significantly different risk or volatility characteristics than other investments generally made by the institution. If a customer is either generally not capable of evaluating investment risk or lacks sufficient capability to evaluate the particular product, the scope of a member's customer-specific obligations under the suitability rule would not be diminished by the fact that the member was dealing with an institutional customer. On the other hand, the fact that a customer initially needed help understanding a potential investment need not necessarily imply that the customer did not ultimately develop an understanding and make an independent investment decision.

A member may conclude that a customer [intends to exercise] *is exercising* independent judgment if the customer's investment decision will be based on its own independent assessment of the opportunities and risks presented by a potential investment, market factors and other investment considerations. Where the broker-dealer has reasonable grounds for concluding that the institutional customer is making independent investment decisions and is capable of independently evaluating investment risk, then a member's obligation to determine that a recommendation is suitable for a particular customer is fulfilled.[3] Where a customer has delegated decision-making authority to an agent, such as an investment advisor or a bank trust department, this Interpretation shall be applied to the agent.

A determination of capability to evaluate investment risk independently will depend on an examination of the customer's capability to make its own investment decisions, including the resources available to the customer to make informed decisions. Relevant considerations could include:

- The use of one or more consultants, investment advisers or bank trust departments;
- The general level of experience of the institutional customer in financial markets and specific experience with the type of instruments under consideration;
- The customer's ability to understand the economic features of the security involved;
- The customer's ability to independently evaluate how market developments would affect the security; and
- The complexity of the security or securities involved.

A determination that a customer is making independent investment decisions will depend on the nature of the relationship that exists between the member and the customer. Relevant considerations could include:

- Any written or oral understanding that exists between the member and the customer regarding the nature of the relationship between the member and the customer and the services to be rendered by the member;
- The presence or absence of a pattern of acceptance of the member's recommendations;
- The use by the customer of ideas, suggestions, market views and information obtained from other members or market professionals, particularly those relating to the same type of securities; and
- The extent to which the member has received from the customer current comprehensive portfolio information in connection with discussing recommended transactions or has not been provided important information regarding its portfolio or investment objectives.

Members are reminded that these factors are merely guidelines which will be utilized to determine whether a member has fulfilled its suitability obligations with respect to a specific institutional customer transaction and that the inclusion or absence of any of these factors is not dispositive of the determination of suitability. Such a determination can only be made on a case-by-case basis taking into consideration all the facts and circumstances of a particular member/customer relationship, assessed in the context of a particular transaction.

For purposes of this Interpretation, an institutional customer shall be any entity other than a natural person. In determining the applicability of this Interpretation to an institutional customer, the NASD will consider the dollar value of the securities that the institutional customer has in its portfolio and/or under management. While this Interpretation is potentially applicable to any institutional customer, the guidance contained herein is more appropriately applied to an institutional customer with at least $10 million invested in securities in the aggregate in its portfolio and/or under management.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

This amendment completely replaces and supersedes Amendment No. 2. This Amendment responds to public comments received by the SEC to the publication of the proposed rule change in Securities Exchange Act Release No. 36383 (October 17, 1995), 60 FR 54530 (October 24, 1995) (the ''Release'').[5] This

[3] *See*, note 2.

[5] The Commission received letters from the following: (1) Brian C. Underwood, Vice President-Director of Compliance, A.G. Edwards & Sons, Inc., dated November 14, 1995; (2) David J. Master, Chairman and CEO, Coastal Securities Ltd., dated November 28, 1995; (3) Betsy Dotson, Assistant Director Federal Liaison Center, Government Finance Officers Association, dated November 14, 1995; (4) Thomas M. Selman, Associate Counsel, Investment Company Institute, dated November 14, 1995; (5) Jane D. Carlin, Principal and Counsel, Morgan Stanley & Co. Incorporated, dated December 5, 1995; (6) Paul Saltzman, Senior Vice President and General Counsel, Public Securities Association, dated November 30, 1995; (7) Scott H.

Continued

amendment, in response to certain public comments, makes certain changes to the text of the proposed rule change, the statement of purpose section of the proposed rule change, and the applicability of certain Rules of Fair Practice in the chart (reproduced below) entitled ''Applicability of the Rules of Fair Practice to Exempted Securities, Including Government Securities (Except Municipals)'' (''Applicability Table'').

1. Purpose

a. Application of the NASD Rules of Fair Practice to Government Securities

Interpretation of the Board of Governors—Prompt Receipt and Delivery of Securities, Article III, Section 1 of the Rules of Fair Practice (''Prompt Receipt and Delivery Interpretation'')

The proposed rule change would expand the short-sale exemption under paragraphs (b)(2) (a) and (b) of the Prompt Receipt and Delivery Interpretation from corporate debt to all debt. One commenter suggests that the long-sale provisions under paragraph (b)(1) of the Prompt Receipt and Delivery Interpretation be similarly amended to exempt a member from making affirmative determinations required under that paragraph prior to accepting a long sale from any customer.[6] The commenter states that the Interpretation will otherwise require a dealer who purchases a government security from a customer to ascertain that the customer is ''long'' the security at the time of the transaction. The commenter argues that this affirmative determination requirement would be contrary to the practice in the government securities market that allows a customer to sell a security to a dealer and cover the sale with a subsequent purchase or repurchase transaction in the ''specials market''. The commenter states that this practice has been recognized by the Federal Reserve Board and is allowed under Regulation T. The commenter further argues that the ability of customers to finance such short positions along with their ability to keep their positions confidential from the executing dealer helps to make the government securities market extremely liquid.

The NASD acknowledges that, in some circumstances, it may be difficult for members to ascertain the position of a customer's account prior to accepting a long-sale in the government securities market. The NASD also recognizes that purchase and repurchase transactions in the government securities market reduce fails and increase the liquidity of the market. It is also important to note that the proposed rule change would amend Article III, Section 21(b)(i) of the Rules of Fair Practice to exempt all debt from the member requirement to mark order tickets ''long'' or ''short.'' In addition, the proposed rule change would amend paragraph (b)(2) of the Prompt Receipt and Delivery Interpretation to exempt all debt from the affirmative determination requirement regulating short sales. Consistent with these positions, the NASD proposes: (1) to amend paragraph (b)(1) of the Prompt Receipt and Delivery Interpretation to provide an exemption from the requirements applicable to long sales for exempt securities except for municipals; and (2) to make a conforming change to the Applicability Table to provide that the Prompt Receipt and Delivery Interpretation is ''Not Applicable''.

Interpretation of the Board of Governors—Execution of Retail Transactions in the Over-the-Counter Market, Article III, Section 1 of the Rules of Fair Practice (''Best Execution Interpretation'')

The proposed rule change would apply the Best Execution Interpretation to exempt securities including government securities, except for municipals. Two commenters state that members will have difficulty readily determining the best bid/ask price for a particular government security or similar security, or even the last sale price, as the government securities market and the over-the-counter (''OTC'') debt markets lack systems similar to the consolidated quotation system and the inter-market trading system.[7] One commenter states that the best execution concept has occurred largely in the context of the equity markets and questions the Interpretation's application to the fixed income principal markets where transactions are executed at a ''net price''.[8] The commenter argues that the application of the Best Execution Interpretation should be delayed and considered with the NASD's Mark-Up Proposal[9] in order to consider the extent to which both interpretations provide guidance in connection with pricing securities fairly. One commenter also argues that the NASD should provide guidance that government securities transactions ''be executed at a resultant price to the customer that is reasonable related to the market''.[10] The commenter argues that this concept more accurately reflects important issues in the government securities markets relating to the: (i) mechanics of odd-lot transactions; (ii) difficulty of obtaining the ''best price'' as that term is considered in the equity markets; and (iii) quotations of active versus non-active government issues of the same maturity in order to serve different customer needs, i.e., institutional liquidity-goals versus retail customer yield-goals. The commenter also argues that applying the Best Execution Interpretation to government securities is counter to the SEC's initiative of providing more market transparency to the government securities markets because, for example, it will force firms to continue to use verbal/paper ticket order desks.

The NASD believes that the general concept of the Best Execution Interpretation, *i.e.*, that a member should seek in executing customer transactions to obtain the best price for the customer, should apply in the government securities market even though certain specific provisions of the Best Execution Interpretation may not be applicable to the government securities market. The NASD's position regarding the applicability of the Best Execution Interpretation to government securities is consistent with its position that the concepts of the Interpretation apply as well to all OTC markets that the NASD regulates, including direct participation programs.[11] The NASD will further consider whether an amendment to the Best Execution Interpretation is necessary to clarify this position as it applies to government securities, but believes such an amendment is not necessary at this time given the clarification provided herein.

Rockoff, Managing Director, Director of Compliance, and Assistant General Counsel, Nomura Securities International, Inc., dated December 14, 1995; (8) Robert F. Prince, Chairman Federal Regulation Committee, and Zachary Snow, Chairman OTC Derivatives Products Committee, Securities Industry Association, dated December 17, 1995; and (9) David Rosenau, President, The Winstar Government Securities Company L.P., dated December 27, 1995. These letters will be referred to hereinafter by their number as indicated in this footnote.

[6] See Comment Letter No. 6, *supra* note 5.

[7] *See* Comment Letters Nos. 6 and 9, *supra* note 5.

[8] *See* Comment Letter No. 6, *supra* note 5.

[9] *See* NTM 94–62 (requesting comment on the proposed Interpretation of the Board of Governors application of the NASD Mark-Up Policy to Transactions in Government and Other Debt Securities).

[10] *See* Comment Letter No. 9, *supra* note 5.

[11] *See* NTM 91–69 (discussing the application of the Interpretation to transactions in direct participation program securities).

Interpretation of the Board of Governors—Front Running Policy, Article III, Section 1 of the Rules of Fair Practice (''Front Running Policy'')

The proposed rule change would apply the Front Running Policy to exempt securities including government securities, except for municipals. One commenter requests that the effectiveness of the Front Running Policy be delayed to determine how this policy applies to the government securities market.[12] The commenter argues that the Front Running Policy was intended to apply solely to equities and is currently limited to transactions that are required to be reported on the last sale reporting systems administered by Nasdaq, the Consolidated Tape Association or the Options Price Reporting Authority, whereas government securities transactions are not reported on such systems. The commenter further argues that whereas a member's advance knowledge of a block trade can have a substantial effect on an equity security, it is less clear that such prior knowledge permits a broker-dealer to predict and benefit from the effect of a transaction on the price of a government security transaction because of differences in the government securities markets. The commenter requests clarification, for purposes of the Front Running Policy, regarding what constitutes a ''block trade'' in the government securities markets, because government securities do not trade as ''shares.''

In response, the NASD acknowledges that the Front Running Interpretation is drafted to apply only to equity securities. The NASD proposes to amend the Applicability Table to indicate that the Front Running Policy under Article III, Section 1 of the Rules of Fair Practice is ''Not Applicable.'' The NASD believes, however, that the member conduct prohibited by the Front Running Interpretation may occur under certain circumstances in the government securities markets. The NASD intends to review the application of the Front Running Interpretation to the government securities markets. In the interim, the NASD will remind members that actions for similar front running conduct occurring in the government securities markets may be brought under Article III, Section 1 of the Rules of Fair Practice.[13]

The NASD similarly notes that the Interpretation of the Board of Governors at paragraph 2125.07 regarding the trading ahead of customer limit orders and the Interpretation of the Board of Governors—Trading Ahead of Research Reports, are drafted to apply only to equity securities. The NASD believes the Conduct addressed by these Interpretations also may occur under certain circumstances in the government securities markets and intends to review the application of these Interpretations to the government securities markets. In the interim, the NASD will remind members that actions for similar conduct occurring in the government securities markets may be brought under Article III, Section 1 of the Rules of Fair Practice. The NASD would further amend the Applicability Table by adding the recently approved Interpretation of the Board of Governors at paragraph 2125.07, and the Interpretation of the Board of Governors—Trading Ahead of Research Reports under Article III, Section 1 of the Rules of Fair Practice, with the statement that these Interpretations are ''Not Applicable,'' and followed by footnotes stating that violations for such conduct in the government securities markets may be brought under Article III, Section 1 of the Rules of Fair Practice.

Article III, Section 23 of the Rules of Fair Practice—Net Prices to Persons Not in Investment Banking or the Securities Business

The proposed rule change would apply Article III, Section 23 of the Rules of Fair Practice to exempt securities, except for municipals. One commenter requests clarification of the application of that section to the government securities markets.[14] In response, the NASD has determined that the requirements contained in Article III, Section 23 are superseded and more clearly provided for under: (i) Rule 10b–10 of the Act relating to Confirmation of Transactions; and (ii) Article III, Section 25 of the Rules of Fair Practice relating to Dealing with Non-Members. The NASD, therefore, proposes to amend the Applicability Table to indicate that Article III, Section 23 of the Rules of Fair Practice is ''Not Applicable; Superseded by SEC and NASD Rules.''

Article III, Section 35A of the Rules of Fair Practice/Schedule C to the By-laws

The proposed rule change would apply Schedule C of the By-Laws (''Schedule C''), regarding NASD registration requirements of persons associated with a member, to the personnel of sole-government securities broker-dealers, including persons selling options on government securities. The proposed rule change also would have the effect of applying Article III, Section 35A of the Rules of Fair Practice (''Section 35A'') to the options communications of such members with the public. One commenter states that Section 35A(b) requires a Compliance Registered Options Principal to approve such literature, but Schedule C requires a member to designate such a principal only according to Article III, Section 33.[15] Pursuant to the Applicability Table of the proposed rule change, however, the commenter notes that the NASD would not apply the provisions of Article III, Section 33 to government securities. The commenter requests clarification as to whether the proposed rule change will require a government securities broker-dealer to register an associated person as its ''Compliance Registered Options Principal'' under Part II, Section 2(f) of Schedule C in order to comply with Section 35A(b) of the Rules of Fair Practice that requires the registration of such a Principal in order to approve certain options advertisements, sales materials and other literature for government securities options transactions.[16] The commenter argues that this compliance issue is unclear because the registration provision under Part II, Section 2(f) of Schedule C provides that a member should designate a Compliance Registered Options Principal only according to the options provisions of Article III, Section 33 of the Rules of Fair Practice which would not be applicable to government securities.

In response, the NASD is currently reviewing the issue of whether a ''Compliance Registered Options Principal'' under Schedule C should be required for members that trade options on government securities, and the NASD intends to file in 1996 a proposed rule change regarding this registration issue. Therefore, the NASD is amending the Applicability Table to indicate that Article III, Section 35A(b) is ''Not Applicable/Under Review.'' Article III, Section 35A(b) will not be applicable to options advertisements, sales materials and other literature for government securities options transactions during this interim review period.

Article III, Section 45 of the Rules of Fair Practice—Customer Account Statements

The proposed rule change would phase-in the implementation of Article

[12] *See* Comment Letter No. 6, *supra* note 5.

[13] A footnote has been added to the Applicability Table to indicate that such conduct in the government securities market may be brought under Article III, Section 1 of the Rules of Fair Practice.

[14] *See* Comment Letter No. 6, *supra* note 5.

[15] *Id.*

[16] *Id.*

III, Sections 21, 27 and 32 of the Rules of Fair Practice to dealers in government securities within three months after the effective date of the rule change to provide members with sufficient time to change their internal procedures to comply with the rules. One commenter requests that the effective date of the application of Article III, Section 45 of the Rules of Fair Practice be provided the same implementation period. The NASD, upon review, concurs with this suggestion and proposes that Article III, Section 45 of the Rules of Fair Practice be implemented within three months after the effective date of the rule change to provide members with sufficient time to change their internal procedures to comply with this rule.

Set forth below is a table identifying the applicability of the Rules of Fair Practice to exempted securities, including government securities (except municipals). Proposed changes to the original table contained in the Release are indicated, with additions in italics and deletions in brackets.

APPLICABILITY OF THE RULES OF FAIR PRACTICE TO EXEMPTED SECURITIES, INCLUDING GOVERNMENT SECURITIES (EXCEPT MUNICIPALS)

	Article III	
Section 1	Business Conduct of Members	Applicable.
	Interpretations of the Board of Governors—.	
	Execution of Retail Transactions in the Over-the Counter Market	Applicable.
	Prompt Receipt and Delivery	*Not* Applicable.
	Forwarding of Proxy and Other Materials	Not Applicable.
	Free-Riding and Withholding	Amending to be Not Applicable.
	Interpretation on Limit Order Protection	Not Applicable.
	Interpretation of the Board of Governors ¶2125.07	*Not Applicable.**
	Front Running Policy	*Not Applicable.**
	Trading Ahead of Research Reports	*Not Applicable.**
Section 2	Recommendations to Customers	Applicable.
	Policy of the Board of Governors—Fair Dealing With Customers Policy	Applicable.
Section 3	Charges to Customers	Applicable.
Section 4	Fair Prices and Commission	Applicable.
	Interpretation of the Board of Governors—NASD Mark-Up Policy	Applicable.**
Section 5	Publication of Transactions and Quotations	Applicable.
	Interpretation of the Board of Governors—Manipulative and Deceptive Quotations.	Applicable.
Section 6	Offers at Stated Prices	Applicable.
	Policy of the Board of Governors—Policy With Respect to Firmness of Quotations.	Applicable.
Section 7	Disclosure of Prices in Selling Agreements	Applicable only to traditional underwriter arrangements.
Section 8	Securities Taken in Trade	Not Applicable.
	Interpretation of the Board of Governors—Safe Harbor and Presumption of Compliance.	Not Applicable.
Section 9	Use of Information Obtained in Fiduciary Capacity	Applicable.
Section 10	Influencing or Rewarding Employees of Others	Applicable.
Section 11	Payment Designed to Influence Market Prices, Other than Paid Advertising	Applicable.
Section 12	Disclosure on Confirmations	Not Applicable; superseded by SEC rules.
Section 13	Disclosure of Control	Not Applicable.
Section 14	Disclosure of Participation or Interest in Primary or Secondary Distribution	Applicable.
Section 15	Discretionary Accounts	Applicable.
Section 16	Offers ''At the Market''	Not Applicable.***
Section 17	Solicitation of Purchases on an Exchange to Facilitate a Distribution of Securities.	Applicable.
Section 18	Use of Fraudulent Devices	Applicable.
Section 19	Customers Securities or Funds	Applicable.
Section 20	Installment or Partial Payment Sales	Applicable.
Section 21	Books and Records	Applicable, except for proposed amendments to Subsection (b)(i).
Section 22	Disclosure of Financial Condition	Applicable.
Section 23	Net Prices to Persons Not in Investment Banking or Securities Business	*Not Applicable.*
Section 24	Selling Concessions	Not Applicable.
	Interpretation of the Board of Governors—Services in Distribution	Not Applicable.
Section 25	Dealing with Non-Members	Not Applicable.
	Interpretation of the Board of Governors—Transactions Between Members and Non-members.	Not Applicable.
Section 26	Investment Companies	Not Applicable.
Section 27	Supervision	Applicable.
Section 28	Transactions for or by Associated Persons	Applicable.
Section 29	Variable Contracts of an Insurance Co.	Not Applicable.
Section 30	Margin Accounts	Applicable.
Section 31	Securities Failed to Receive and Failed to Deliver	Not Applicable.
Section 32	Fidelity Bonds	Applicable.
Section 33	Options	Not Applicable.
Section 34	Direct Participation Programs Appendix F	Not Applicable.
Section 35	Communications With the Public	Applicable.

APPLICABILITY OF THE RULES OF FAIR PRACTICE TO EXEMPTED SECURITIES, INCLUDING GOVERNMENT SECURITIES (EXCEPT MUNICIPALS)—Continued

Section 35A	Options Communications With the Public	*Not Applicable/ Under Review.*
Section 36	Transactions with Related Persons	Not Applicable.
	Interpretations of the Board of Governors—Transactions With Related Persons.	Not Applicable.
Section 37	Operating Rules for ITS/CAES and CAES	Not Applicable.
Section 38	Regulation of Activities of Members Experiencing Financial and/or Operational Difficulties.	Applicable.
Section 39	Approval of Change in Exempt Status under SEC Rule 15c3–3	Applicable.
Section 40	Private Securities Transactions	Applicable.
Section 41	Short-Interest Reporting	Not Applicable.
Section 42	Prohibition on Transactions During Trading Halts	Not Applicable.
Section 43	Outside Business Activities	Applicable.
Section 44	The Corporate Financing Rule	Not Applicable.
Section 45	Customer Account Statements	Applicable.
Section 46	Adjustment of Open Orders	Not Applicable.
Section 47	Clearing Agreements	Applicable.
Section 48	Short Sale Rule	Not Applicable.
Section 49	Primary Nasdaq Market Maker Standards	Not Applicable.
	Article IV.—Complaints	
Section 1	Availability to Customers of Certificate, by-laws, Rules and Code of Procedures.	Applicable.
Section 2	Complaints by Public Against Members for Violations of Rules	Applicable.
Section 3	Complaints by District Business Conduct Committee	Applicable.
Section 4	Complaints by Board of Directors	Applicable.
Section 5	Reports and Inspection of Books for Purpose of Investigating Complaints	Applicable.
	Article V	
Section 1	Sanctions for Violations of Rules	Applicable.
Section 2	Interpretation of the Board of Governors—The Effect of a Suspension or Revocation of the Registration, if any, of a Person Associated with a Member or the Barring of a Person from further Association with any Member.	Applicable.
	Payment for Fines, Other Monetary Sanctions, or Costs	Applicable.
Section 3	Posts of Proceedings	Applicable.

** The NASD intends to review the application of this Interpretation to the government securities markets. In the interim, members are reminded that actions for similar conduct occurring in the government securities markets may be brought under Article III, Section 1 of the Rules of Fair Practice.*

** Article III, Section 4 of the Rules of Fair Practice and the NASD Mark-Up Policy currently apply to transactions in equity and corporate debt securities. The NASD is developing an Interpretation of the Mark-Up Policy with respect to exempt securities and other debt securities. Therefore, the current application of Article III, Section 4 of the Rules of Fair Practice and the NASD Mark-Up Policy will not apply to transactions in exempt securities until adoption of the proposed Interpretation of the NASD Mark-Up Policy with respect to all debt securities. However, current Article III, Section 4 of the Rules of Fair Practice and the Mark-Up Policy remain in full force and effect for all equity and corporate debt transactions. *See* letter from Elliott R. Curzon, Assistant General Counsel, NASD, to Mark P. Barracca, Branch Chief, Division of Market Regulation, SEC, dated October 17, 1995 (Amendment No. 1 to the proposed rule change).

**** The NASD intends to review the application of this Interpretation to the government securities markets. In the interim, members are reminded that actions for similar conduct occurring in the government securities markets may be brought under Article III, Section 1 of the Rules of Fair Practice.*

b. Interpretation of the Board of Governors—Suitability Obligations to Institutional Customers, Article III, Section 2 of the Rules of Fair Practice

Amendment to the Text of the Proposed Interpretation

One commenter pointed out that in the sixth and seventh paragraphs of the proposed Suitability Interpretation the NASD states that the two most important factors in determining a member's suitability obligations are a customer's capability to evaluate investment risk independently and the extent to which the customer ''intends to exercise independent judgment in evaluating a member's recommendation.'' [17] The commenter notes that the NASD goes on to state in the ninth paragraph that a member's obligation to determine suitability is fulfilled if it determines that the customer is capable of evaluating risk and ''is making independent investment decisions.'' The commenter states that such language in the Suitability Interpretation is confusing as it appears to create two different standards, *i.e,* ''intends to exercise independent judgment'' versus ''is making independent investment decisions.'' The commenter suggests replacing the phrase ''intends to exercise'' with the phrase ''is exercising'' to eliminate this confusion.

Upon review, the NASD proposes to conform the language contained in the sixth and seventh paragraphs by replacing the phrase ''intends to exercise'' with the phrase ''is exercising.'' This change is consistent with the purpose of the Suitability Interpretation to provide guidance to members in fulfilling their obligation under Article III, Section 2(a) to have reasonable grounds for believing that the recommendation to a customer for the purchase, sale or exchange of any security is suitable for the customer upon the basis of factors, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs. Under this rule, the member's suitability obligation relates to the member's

[17] *See* Comment Letter No. 5, *supra* note 5.

recommendation and not to a future transaction date. Under the proposed Suitability Interpretation, therefore, a member should be considering whether a customer ''is making independent investment decisions'' in connection with the member's present recommendation(s) rather than speculating on the customer's intent to exercise independent judgment at some future transaction date.

Regulatory Status of Language Contained in NASD Notice to Members Requesting Member Comment

One commenter expressed concern that the earlier proposals of the Suitability Interpretation contained in Notice to Members 94–62 (''NTM 94–62'') and Notice to Members 95–21 (''NTM 95–21'')[18] may be interpreted by end-users and private litigants to support the proposition that there has been a shift in the underlying substantive policy position on the part of both the NASD and the Commission to increase a member's suitability obligations to institutional accounts.[19] The commenter specifically expressed strong opposition to the language contained in NTM 94–62 that ''the member's relationship with the customer gives rise to a duty to help the customer determine reasonable investment parameters.''

It is the position of the NASD that language contained in any NASD Notice to Members publishing a proposal for comment prior to the filing of resulting NASD rule changes with the SEC should be deemed to have no regulatory status unless the NASD states otherwise. The primary regulatory purpose of the NASD publishing draft proposals for member comment, such as earlier versions of the Suitability Interpretation, is to receive member comment on the initiative without adopting any final position on the particular matter. Any subsequent revisions to proposed rule language or in narrative discussion contained in Notices to Members are not intended by the Association to imply any position regarding the merit of the published language or discussion. The attachment of any regulatory significance to language and discussion contained in Notices to Members publishing a proposal for comment would be contrary to and harm the self-regulatory process envisioned by Section 15A of the Act, as amended, whereby the Association, through the contributions of industry and non-industry volunteers, is able to publish often controversial regulatory proposals for member comment. Therefore, the language contained in NTM 95–21 and NTM 94–62 should not be interpreted by end-users, private litigants, or others, to support the proposition that there has been a shift in any underlying substantive policy position on the part of the NASD to change a member's suitability obligations to institutional accounts.

Member Determination Regarding the Institutional Customer's Capability To Evaluate Investment Risk Independently

One commenter states that three additional factors should be included for consideration by a member in determining an institutional customer's capability to evaluate investment risk independently.[20] The commenter considers the following to be typical indicia of financial sophistication and sufficient trading experience: (i) Whether or not the customer is engaged in the financial industry or in the business of managing its own or others' investments; (ii) whether the customer has in-house investment professionals charged with the responsibility for recommending or making investment decisions on behalf of the customer; and (iii) whether the customer has independently adopted investment guidelines and provides explicit investment guidelines to the member broker-dealer.

The NASD acknowledges that additional factors may be of value to members when considering whether an institutional customer is capable of evaluating investment risk independently. The NASD's proposed Suitability Interpretation states that the considerations included therein are not intended to be requirements or the only factors to be considered, but are offered merely as guidance in determining the scope of a member's suitability obligations. The NASD will look at the listed factors in the Suitability Interpretation in the context of an examination of a member, but recognizes that in certain cases the listed factors may be inappropriate or other factors may also be pertinent to the specific situation.

One commenter argues that the Suitability Interpretation should require that broker-dealers provide specific types of information to customers with regard to specific transactions, such as the instrument's behavior under a variety of conditions, types of risk incurred with certain instruments, and valuation information.[21] The commenter suggests that the absence of affirmative broker-dealer duties may lead to a debate regarding what constitutes a recommendation that triggers the NASD's suitability rule contained in Article III, Section 2 of the Rules of Fair Practice.

The NASD is not seeking by the proposed rule change to adopt the Suitability Interpretation in order to impose additional duties on members which are not already imposed by current Article III, Section 2 of the Rules of Fair Practice, by general anti-fraud principles contained in Section 10(b) of the Act and other provisions of the federal securities laws, or in Article III, Section 18 of the NASD's Rules of Fair Practice.[22] With respect to the issue raised regarding what constitutes a recommendation, the NASD stated in the Release that a significant amount of caselaw has been developed as a result of NASD disciplinary actions and SEC enforcement cases with respect to this concept, which is available as guidance to the membership.

One commenter argues that the relevance of the customer's use of consultants, investment advisers or bank trust departments should depend on the extent of the use and nature of the outside advice.[23] The Commenter also questions whether outside managers for investment pools and trustees fall within the scope of this factor. The NASD agrees that the relevance of a customer's use of professional advisers will depend on the extent of the use of such outside advice. In addition, the proposed Suitability Interpretation states that where a customer has delegated decision-making authority to an agent, such as an investment advisor or a bank trust department, the Interpretation shall be applied to the agent. The Suitability Interpretation, therefore, would apply to any delegated agents of the customer, including outside managers for investment pools, trustees, and other agents.

One commenter argues that the relevance of the customer's general level of experience in the financial markets and with types of instruments under consideration will depend not only on the expertise of the staff but on the nature of changing markets as well.[24] The commenter argues that the relevance of the customer's ability to understand economic features or the complexity of the security involved may turn on the nature of information provided to the investor regarding the features of a specific instrument. The

[18] *See supra* note 1.

[19] *See* Comment Letter No. 6, *supra* note 5.

[20] *See* Comment Letter No. 5, *supra* note 5.

[21] *See* Comment Letter No. 3, *supra* note 5.

[22] *See infra* discussion under ''Other Comments.''

[23] *See* Comment Letter No. 3, *supra* note 5.

[24] *Id.*

commenter also argues that a customer's track record or an affirmative statement by the customer that it has the ability to independently evaluate the effect of the market on a security are unreliable indicators of a customer's ability to independently evaluate the effect of the market on the security. The NASD agrees that the relevance of factors listed in the Suitability Interpretation will vary depending on numerous circumstances. Both the Suitability Interpretation and the discussion of the proposed rule change in the Release emphasized that the factors listed in the Suitability Interpretation are merely guidelines and that the inclusion or absence of any of these factors is not dispositive of the determination of suitability. With regard to the member's consideration of a customer's track record, the NASD addressed this concern in the Release by stating that it believes that a member in an ongoing member/customer relationship will often gain knowledge of factors pertaining to the customer's capability to independently evaluate investment risk, as well as whether the customer intends to and is making independent investment judgments. The NASD believes that a customer's track record or an affirmative statement by the customer are helpful factors for consideration, though not dispositive in themselves.

Member Determination Regarding the Institutional Customer's Making of Independent Investment Decisions

One commenter argues that the factor regarding the ''presence or absence of a pattern of acceptance of a member's recommendation'' is too broad and should apply only to ''captive'' account situations, where a single broker-dealer is effectively controlling substantially all investment decisions of an account.[25] In response, the NASD believes that it would be inappropriate to limit to ''captive accounts'' the member's consideration of the presence or absence of a pattern of a customer's acceptance of a member's recommendation. The NASD believes that a member should be allowed to consider this factor whenever it is appropriate and reasonable to the member's determination.

One commenter argues that three of the listed factors warrant reconsideration as determinative factors or rebuttable presumptions that the member has fulfilled its suitability obligation.[26] Another commenter also argues that the Suitability Interpretation should be amended to create a rebuttable presumption that a member's recommendations to defined institutional customers are suitable.[27] In response, the NASD does not believe it is appropriate to create a safe harbor for members' suitability obligations nor to change or reduce members' obligations under the suitability rule in Article III, Section 2 of the Rules of Fair Practice.

One commenter requests clarification that the lack of a written agreement will not work against investors in disputed cases, and that the inclusion of such a provision in the rule does not indicate a preference for such agreements.[28] The NASD believes that the act of developing such agreements with a customer may be helpful to a member in determining its suitability obligations to the customer, but the existence or absence of such an agreement is not intended to create a presumption as to whether the member has or has not fulfilled its suitability obligations under Article III, Section 2 of the Rules of Fair Practice.

One commenter argues that member consideration of the customer's use of other information as a means of limiting a broker-dealer's suitability obligation may discourage investors from becoming more informed and responsible.[29] The NASD does not agree that the referenced factor or any of the factors listed in the Suitability Interpretation will discourage institutional customers from being more informed and responsible. Rather, this factor recognizes that in many cases institutional customers rely on financial information other than that provided by the member and may, in fact, be subject to a fiduciary obligation to do so.

One commenter argues that member consideration of ''the extent to which the member has received from the customer current comprehensive portfolio information in connection with discussion of recommended transactions'' may not be prudent for the institutional investor with concerns that a member's detailed knowledge of the institution's holdings may affect the institution's ability to trade certain portions of the portfolio or may adversely affect the market for the institution's holdings.[30] The commenter, however, supports the Interpretation's provision that the member consider the extent to which the member has not been provided important information regarding the institution's portfolio or investment objectives.[31] The commenter considers this latter provision to include a jurisdiction's [32] investment guidelines and risk constraints, as well as relevant state and local law. The commenter recommends replacing both of the above considerations with language that would focus on whether the customer has provided ''material relevant to a particular transaction'' and requiring that the member make a reasonable request to obtain relevant portfolio or investment objectives information. The NASD agrees with the commenter that any material relevant to a particular transaction provided by a customer would help members fulfill their suitability obligations under the Suitability Interpretation. The NASD, however, believes that such material information would include current comprehensive portfolio information in connection with the transaction and that the more specific guideline is appropriate even though a customer may not be willing to provide such information. The NASD recognizes the commenter's concerns and reminds members that the Suitability Interpretation states that all the factors are merely guidelines, and that the inclusion or absence of any of these factors is not dispositive in the determination of suitability.

Application of Suitability Interpretation to Certain Agents Delegated by the Institutional Customer

The Suitability Interpretation would require that if an institutional customer has delegated investment authority to an agent such as an investment advisor or money manager, then the Interpretation applies to the agent rather than the customer. One commenter believes that investment professionals employed by institutional customers should bear the total responsibility for their investment decisions made on behalf of their institutional customers, *i.e.*, where the customer relies on an investment professional, the determination of suitability should be presumed to be made by the investment professional.[33] The NASD has stated in the Release that it does not believe it is appropriate to create a safe harbor for members' suitability obligations nor to change or reduce members' obligations under the

[25] *See* Comment Letter No. 5, *supra* note 5.

[26] *See* Comment Letter No. 6, *supra* note 5.

[27] *See* Comment Letter No. 8, *supra* note 5.

[28] *See* Comment Letter No. 3, *supra* note 5.

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] The commenter's reference to the term ''jurisdiction'' reflects that the commenter represents state and local government officials and other public finance specialists involved in all the disciplines comprising public finance.

[33] *See* Comment Letters Nos. 1 and 8, *supra* note 5.

suitability rule in Article III, Section 2 of the Rules of Fair Practice.[34]

Application of Suitability Interpretation to Institutional Customer: $10 Million Threshold

The Suitability Interpretation provides that for its purposes, an institutional customer shall be any entity other than a natural person. It also provides that in determining the applicability of the Suitability Interpretation to an institutional customer, the NASD will consider the dollar value of the securities that the institutional customer has in its portfolio and/or under management. It further states that while it is potentially applicable to any institutional customer, the guidance contained therein is more appropriately applied to an institutional customer with at least $10 million invested in securities in the aggregate in its portfolio and/or under management.

One commenter argues that the $10 million threshold is contrary to language contained in the Congressional report on the Government Securities Act Amendments of 1993, which states that no distinction should be made in the application of the NASD's rules between investors on the basis of size of portfolio.[35] The commenter also argues that the $10 million portfolio threshold contradicts other language in the Suitability Interpretation that states that the Interpretation is potentially applicable to any institutional customer. The commenter further states the $10 million portfolio threshold provision is, therefore, confusing, difficult to apply, and requests clarification on: (i) what is meant by the reference to securities in the aggregate in its portfolio and/or under management; (ii) what is the period during which the $10 million portfolio size criteria applies; (iii) what is intended by the phrase ''under management''; and (iv) what connection the portfolio size has to the rest of the rule. The commenter also requests clarification on how institutional investors with a portfolio less than the threshold will be treated and recommends that if the threshold amount remains, that it be significantly higher than $10 million because otherwise the Interpretation would inappropriately apply to certain small governmental entities with portfolios that are nominal in the context of government operations.

The NASD responded to such concerns when it stated in the Release that it ''agrees that portfolio size is not dispositive of a member's suitability obligations, but believes it is appropriate for the NASD to consider the portfolio size of the customer in determining the applicability of the proposed Suitability Interpretation. The NASD believes that there is a greater likelihood that the member can apply the proposed Suitability Interpretation to an institutional customer with at least $10 million invested in securities in the aggregate in its portfolio and/or under management, but the NASD has no intent to create a presumption either above or below that aggregate dollar amount that the Interpretation will, in fact, apply to a particular institutional customer. In connection with concerns regarding the NASD's method of calculating the $10 million test, the NASD intends to look for guidance for such calculations to SEC Rule 144A.'' [36]

One commenter supports the $10 million threshold but states that this threshold suggests that the dealer is more likely to be able to reach the determination called for by the Suitability Interpretation for accounts of at least that size.[37] One commenter requests clarification that a member's suitability obligations and the guidance provided by the Interpretation apply identically to all registered investment companies regardless of the amount of assets that a particular investment company has under management.[38] The commenter is concerned that the Interpretation will otherwise inadvertently lead to discrimination against smaller investment companies. The commenter argues that all investment companies are subject to equal treatment under the Investment Company Act of 1940 and must operate within the same competitive environment in which they are expected to obtain professional, experienced investment management for their shareholders. One commenter similarly argued that the Interpretation will have an adverse impact on all smaller institutional accounts.[39] The commenter argues that the burden on competition is not necessary or appropriate for such smaller accounts.

The NASD believes the commenters referenced in the preceding paragraph have misinterpreted the reference to $10 million to imply a definitive threshold that distinguishes capable from non-capable institutional customers. The NASD further believes that the additional provisions in the paragraph containing the $10 million dollar reference eliminate any inference that $10 million is a definitive threshold. Also, as noted above, the NASD stated in the Release that it does not intend to create a presumption either above or below that aggregate dollar amount that the Interpretation will, in fact, apply to a particular institutional customer. The $10 million threshold, therefore, in the context of the complete paragraph does not and should not result in inadvertent discrimination against either investment companies or other institutional customers with less than $10 million invested in securities in the aggregate in their portfolios and/or under management.

Another commenter supports the threshold and states that the $10 million provision acknowledges that although certain investors with substantial assets do not fall within the NASD definition of ''institutional account'' in Article III, Section 21 of the Rules of Fair Practice (which establishes a $50 million asset threshold), they are nevertheless capable of evaluating investments and exercising independent investment judgment.[40] The NASD agrees with this commenter's understanding of the $10 million provision contained in the Suitability Interpretation.

The proposed rule change would also amend Article III, Section 2(b) of the Rules of Fair Practice to clarify that for purposes of the account information requirements, the definition of a ''non-institutional customer'' shall mean a customer that does not qualify as an ''institutional account'' under Article III, Section 21(c)(4) of the Rules of Fair Practice. One commenter argues that the information-gathering requirement in Article III, Section 2(b) should apply only to customers that are not considered institutional customers under the Suitability Interpretation.[41] The commenter states that a member will be required to attempt to gather the information required by Article III, Section 2(b) from a customer (such as an entity with total assets of less than $50 million) even if the member reasonably concludes, consistent with the proposed Suitability Interpretation, that the institutional customer is capable of understanding the risks of the recommended transaction and intends to exercise independent judgment in evaluating the member's recommendation.

It is the position of the NASD that the proposed rule change to Article III, Section 2(b) of the Rules of Fair Practice is to distinguish this requirement from

[34] *See also* Comment Letters Nos. 6 and 8, *supra* note 5.

[35] *See* Comment Letter No. 3, *supra* note 5.

[36] *See* Securities Exchange Act Release No. 36383, *supra* note 2, at 54549.

[37] *See* Comment Letter No. 6, *supra* note 5.

[38] *See* Comment Letter No. 4, *supra* note 5.

[39] *See* Comment Letter No. 1, *supra* note 5.

[40] *See* Comment Letter No. 5, *supra* note 5.

[41] *See* Comment Letter No. 6, *supra* note 5.

the suitability obligations under Article III, Section 2(a) of the Rules of Fair Practice and the Suitability Interpretation. The proposed rule change clarifies that fulfilling the suitability obligation under the Suitability Interpretation does not reduce the member's other obligation under Article III, Section 2(b) to customers that do not qualify as institutional accounts under Article III, Section 21(c)(4) of the Rules of Fair Practice, even though some of these customers would be considered institutional customers according to the Suitability Interpretation. The NASD considers the account information requirements contained under Article III, Section 2(b) to be an obligation with regulatory merit separate from and not superseded by the guidance contained in the Suitability Interpretation.

Additional Comments

One commenter states that Article III, Section 2(a) of the Rules of Fair Practice is an unclear rule.[42] The NASD disagrees with this statement. The source of the language for Article III, Section 2(a) of the Rules of Fair Practice dates from the 1930s Investment Bankers Code drafted during the days of the National Recovery Administration. The NASD believes that during those difficult financial times it would not have been unusual for the involved business and government leaders to have determined that the U.S. financial markets could not be revived and flourish in an business environment with a fair practice standard of *caveat emptor.* The NASD believes the drafters of the suitability rule language must have developed the suitability rule to establish a basic obligation that a broker-dealer is responsible for its recommendations, similar to the basic responsibility of a manufacturer for the quality of its product. In developing the rule, it is believed that the drafters recognized that a workable suitability rule could not go so far as to provide detailed guidance for all circumstances, yet must address all circumstances. The result of their efforts is the language subsequently adopted as the NASD's suitability rule in Article III, Section 2(a) of the Rules of Fair Practice. The historical use of this rule has demonstrated that it sets a standard of behavior that is workable and enforceable when applied to the specific facts and situations giving rise to a complaint of violation. Contrary to the commenter's suggestion that Article III, Section 2(a) is an unclear rule, the NASD believes that the suitability rule is an important and proven regulatory standard of fair dealing in the securities industry much the same as the NASD's requirement under Article III, Section 1 of the Rules of Fair Practice that a member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade. The NASD believes that the language contained in its suitability rule has achieved its intended purpose of protecting the investing public and maintaining confidence in the U.S. securities markets and has, thereby, contributed to the global competitiveness and growth of the U.S. financial markets since the 1930s.

The commenter also argues that the Suitability Interpretation would impose an ''unclearly articulated burden of proof'' on a member regarding how to fulfill suitability obligations to institutional customers.[43] The NASD disagrees. The Suitability Interpretation would provide a member with significantly more guidance than now exists under Article III, Section 2(a) of the Rules of Fair Practice regarding when the member is considered to have ''reasonable grounds for believing'' that it has fulfilled its suitability obligations under Article III, Section 2(a) of the Rules of Fair Practice.

The commenter also argues that the Suitability Interpretation unfairly allocates responsibilities between the customer and the broker-dealer and is confusing because it would: (i) Impose new duties on members to obtain certain information from institutional customers regarding the Interpretation's listed factors and to keep books and records regarding their suitability determinations for future examination by the NASD; (ii) fails to provide a clear definition of ''institutional investor'' and ''recommendation;'' and (iii) fails to establish a rebuttable presumption that a member's recommendations to institutional customers are suitable.

The commenter states that the Suitability Interpretation imposes new duties that do not currently exist as Article III, Section 2(a) of the Rules of Fair Practice requires only that a member make a suitability determination ''upon the basis of the facts, *if any,* disclosed by such customer,'' and Article III, Section 2(b) of the Rules of Fair Practice requires only that a member must make reasonable efforts to obtain current information with regard to non-institutional accounts. The commenter argues that the text of these two subsections of Article III, Section 2 of the Rules of Fair Practice suggests that it is not currently mandatory for members to obtain the information set forth in the list of relevant factors for institutional investors. Another commenter also argues that the Suitability Interpretation should not increase member documentation or record keeping requirements.[44]

The NASD agrees that Article III, Section 2(a) of the Rules of Fair Practice does not contain books and records requirements, and the NASD does not bring actions under Section 2(a) on this basis. The Suitability Interpretation also does not contain books and records requirements. Members, however, are responsible for demonstrating the fulfillment of their suitability obligations under Article III, Section 2(a) in NASD examinations. Members would have the same responsibility under the Suitability Interpretation. With regard to the member obligations contained in the Suitability Interpretation, the NASD states in the Release that in revising earlier drafts of the Suitability Interpretation, the NASD intended to eliminate the appearance that the listed factors create an evidentiary checklist for NASD compliance review by replacing the phrase ''the Board has identified certain factors which are considered when the NASD conducts its review for compliance'' in the fourth paragraph of the Suitability Interpretation contained in the proposed rule change, with the phrase ''the Board has identified certain factors which may be relevant when considering compliance.'' [45] Thus, the NASD agrees with the commenter that the responsibilities of the member are limited under Article III, Section 2(a) of the Rules of Fair Practice in that the member is not the guarantor of the investment nor responsible for the absence of information not provided by the institutional customer.

In a related comment, one commenter also objects that the proposed Suitability Interpretation would impose a ''heavy burden of proof'' when dealing in an institutional context.[46] The NASD's position is that a member is responsible for demonstrating in an NASD examination or investigation that it has fulfilled its obligations under Article III, Section 2(a) of the Rules of Fair Practice, in the same manner that the member must demonstrate

[42] *See* Comment Letter No. 7, *supra* note 5. The commenter states that the Suitability Interpretation proposed to be adopted under Article III, Section 2 ''muddies an already unclear rule.''

[43] *See* Comment Letter No. 7, *supra* note 5.

[44] *See* Comment Letter No. 8, *supra* note 5.

[45] *See* Securities Exchange Act Release No. 36383, *supra* note 2, at 54553.

[46] *See* Comment Letter No. 7, *supra* note 5.

compliance with its obligations under any federal security law. Thus, a member may determine that it is necessary to establish internal procedures that will facilitate a demonstration that the member has met its regulatory obligations. This responsibility exists under Article III, Section 2(a) today.

With regard to the commenter's specific proposal that the Suitability Interpretation provide an objective definition of the term ''institutional investor,'' the NASD believes this approach would arbitrarily discriminate between institutional investors based on factors such as asset size, portfolio size or institutional type. The NASD states in the Release that the Suitability Interpretation provides guidance to members on the relevant considerations that should be examined by a member in fulfilling its suitability obligations to all institutional customers and does not unfairly discriminate between institutional customers based on such factors.[47] The NASD further states in the Release that it believes this regulatory approach is in furtherance of the Act, as amended.[48]

With respect to the commenter's proposal that a definition of ''recommendation'' be adopted, the NASD stated in the Release that Article III, Section 2 of the Rules of Fair Practice has been applicable to members' recommendations since the inception of the NASD.[49] A significant amount of case law has been developed as a result of NASD disciplinary actions with respect to this provision, which is available as guidance to the membership. The NASD believes that defining the term ''recommendation'' is unnecessary and would raise many complex issues in the absence of the specific facts of a particular case.

With regard to the commenter's proposal that the Suitability Interpretation provide a rebuttable presumption that member recommendations to institutional customers are suitable, the NASD states in the Release that it believes that a member's suitability obligation under Article III, Section 2(a) of the Rules of Fair Practice remains with the member until fulfilled and that, therefore, the creation of a ''clear rebuttable presumption'' through the fulfillment of certain procedures would not be appropriate.[50] In addition, as set forth below, such a rebuttable presumption would only be acceptable if a definable class of institutional investors could be identified that would not need the protection of the NASD's suitability rule under all conceivable circumstances.

The commenter also suggests there is regulatory precedent for its position that the Suitability Interpretation should be amended to provide for a rebuttable presumption that member transactions with institutional investors are suitable. The commenter cites Rule 144A under the Securities Act of 1933, as amended (''1933 Act''), which provides exemptions from the registration requirements of the 1933 Act by allowing unregistered securities to be resold to objectively defined ''qualified institutional investors'' (''QIBs''). The commenter also cites Rule 15a–6 of the Securities Exchange Act of 1934, as amended (''Exchange Act''), which provides exemptions for certain foreign brokers and dealers from the broker-dealer registration requirements of Section 15(a)(1) and 15B(a)(1) of the Exchange Act when, among other things, such foreign broker-dealers deal under certain conditions with ''U.S. institutional investors'' or ''major U.S. institutional investors.''[51] The commenter states that it is difficult to understand why the NASD's suitability rule is ''sacrosanct'' relative to the above statutorily-required securities and broker-dealer registration requirements.

The NASD notes that Rule 144A under the 1933 Act allows unregistered securities to be resold to certain institutional buyers who are of sufficient size they are presumed to have the sophistication[52] to purchase securities based upon disclosure documents meeting the anti-fraud requirements rather than the SEC standardized disclosure forms. In the NASD's opinion, Rule 144A is not a safe harbor from disclosure because, regardless of the lack of reliance on the SEC's disclosure documents and pre-offering registration with the SEC, disclosure regarding the securities offered is generally provided to QIBs in order for the offering to be in compliance with the anti-fraud provisions of the federal securities laws.[53] The creation of a ''rebuttable presumption'' under the NASD's suitability rule would, however, create a safe harbor from the NASD's fair practice standard that a member shall reasonably believe that its recommendation is suitable, which the NASD believes is totally inappropriate. As important, the NASD is unable to identify a class of institutional investors that would not need the protection of the NASD's suitability rule under all conceivable circumstances. For the above reasons, the NASD believes that a proposed ''rebuttable presumption'' for the NASD's suitability rule in connection with transactions with institutional customers is significantly different than the SEC's Rule 144A safe harbor for resales of unregistered securities to QIBs.

With regard to the commenter's argument that there is precedent for providing a status safe harbor in the Suitability Interpretation based on Rule 15a–6 of the Exchange Act, the NASD believes that these provisions are too different for any comparison and precedent to be used. Rule 15a–6 of the Exchange Act does not waive major investor protection standards for U.S. institutions, whereas the NASD believes a safe harbor in the Suitability Interpretation would waive such protections. Rule 15a–6, *inter alia*, provides an exemption from broker-dealer registration (referred to as the direct contact exemption) that generally permits certain foreign broker-dealers[54] to engage in solicited transactions with ''U.S. institutional investors'' or ''major U.S. institutional investors'' through a registered broker-dealer acting as an intermediary. The rule permits foreign broker-dealers to contact U.S. institutional investors only with the participation of an associated person of a registered broker-dealer. Rule 15a–6 also generally permits certain foreign broker-dealers to send research reports

[47] *See* Securities Exchange Act Release No. 36383, *supra* note 2, at 54549.

[48] *See supra* discussion under ''Application of Suitability Interpretation to Institutional Customer: $10 Million Threshold.''

[49] *See* Securities Exchange Act Release No. 36383, *supra* note 2, at 54556.

[50] *Id.* at 54553.

[51] The discussion of Rule 144A and Rule 15a–6 contained in this Release was prepared by the NASD's Office of General Counsel. Accordingly, the discussion of Rule 144A and Rule 15a–6 contained herein is not a description or interpretation of the rules by the Commission or Commission staff. *See* Securities Exchange Act Release No. 27017 (July 11, 1989), 54 FR 30013 (July 18, 1989).

[52] Rule 144A relies on an extremely high standard of $100 million invested in securities in order to ensure that potential investors have sufficient sophistication to make investment decisions without need for SEC registration.

[53] In fact, the introduction to Rule 144A specifically states that ''[t]his section relates solely to the application of Section 5 of the Act and not to antifraud or other provisions of the Federal securities laws.''

[54] Rule 15a–6(a) exempts only foreign brokers or dealers, which are defined in paragraph (b)(3) to mean persons not resident in the United States that are not offices or branches of, or natural persons associated with, registered broker-dealers, and whose securities activities fall within the definitions of ''broker'' or ''dealer'' in sections 3(a)(4) or 3(a)(5) of the Exchange Act. The definition in paragraph (b)(3) expressly includes any U.S. person engaged in business as a broker or dealer entirely outside the United States. This definition also includes foreign banks to the extent that they operate from outside the United States, but not their U.S. branches or agencies.

under certain conditions [55] to ''major U.S. institutional investors'' and to engage in unsolicited transactions from such investors without a registered broker-dealer acting as an intermediary.[56] The SEC has stated that under these conditions, it believes that direct distribution would be consistent with the free flow of information across national boundaries without raising substantial investor protection concerns.[57] The NASD believes that different procedures adopted under Rule 15a–6 for solicited and unsolicited transactions and for ''U.S. institutional investors'' and ''major U.S. institutional investors'' demonstrates that the SEC sought to carefully preserve the safeguards offered by broker-dealer registration, and not adopt an across-the-board exemption similar to the securities registration exemption provided by Rule 144A for QIBs. In this connection, the SEC states in the adopting release that ''* * * the Commission does not believe that sophistication is in all circumstances an effective substitute for broker-dealer regulation.'' [58] The exemption adopted under Rule 15a–6 that permits unregistered foreign broker-dealers to send research reports under certain conditions to a ''major U.S. institutional investor'' and permits such institutions in certain circumstances to engage in unsolicited transactions is narrowly drawn. The NASD believes that the definition of ''major U.S. institutional investor'' sets a very high standard [59] for a very small exemption and recognizes the reality that such U.S. investors interested in foreign securities are capable of accessing research and entering into transactions with unregistered foreign broker-dealers with respect to foreign securities. Rule 15a–6, therefore, is significantly more narrow than that proposed by the commenter with respect to the NASD's suitability rule that would relieve members of their suitability obligations with respect to the entire class of institutional investors. Moreover, the provisions of Rule 15a–6 are intended to accommodate regulatory comity and facilitate access to foreign markets by certain U.S. institutional investors.

The commenter also argues, contrary to its prior argument, that ''even though the NASD does not intend to create a safe harbor, the Proposal adopts the framework of a safe harbor when it suggests that 'where the broker-dealer has reasonable grounds for concluding that the institutional customer is making independent investment decisions and is capable of independently calculating investment risk, then a member's obligation to determine that a recommendation is suitable for a particular customer is fulfilled.' '' The NASD disagrees; there are no safe harbors in the suitability Interpretation. The Suitability Interpretation clarifies, by discussion and examples of relevant factors, the standard to establish the ''reasonable grounds'' that a member should have under Article III, Section 2(a) of the Rules of Fair Practice regarding the suitability of its recommendations to institutional customers. Under the Suitability Interpretation, a member is unable to determine whether its obligation to an institutional customer under Article III, Section 2(a) of the Rules of Fair Practice is fulfilled unless the member engages in a subjective inquiry and analysis of the factors in the Suitability Interpretation and any other relevant factors. The Suitability Interpretation requires the member to have sufficient knowledge of the customer in order to rely on the Interpretation in fulfilling its obligation under Article III, Section 2(a) of the Rules of Fair Practice. The NASD states in the Release [60] that it believes such knowledge is often gained in an ongoing member/customer relationship, but acknowledges that a consideration would include the extent to which the member has received from the customer current comprehensive portfolio information in connection with discussing recommended transactions or has not been provided important information regarding its portfolio or investment objectives.

2. Statutory Basis

The NASD believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A(b)(6) of the Act,[61] which requires that the rules of the Association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest in that the rule change will implement the Association's expanded sales practice authority over exempted securities, except for municipals, by creating one set of sales practice rules for members by merging the Government Securities Rules into the Rules of Fair Practice and applying, where applicable, the Rules of Fair Practice to those members registered with the SEC solely under the provisions of Section 15C of the Act and to transactions in exempted securities, including government securities, except municipals. The proposed rule change, as amended, will also further the above purposes of the Act by adopting a new Interpretation of the Board of Governors—Suitability Obligations to Institutional Customers under Article III, Section 2 of the Rules of Fair Practice to: (i) apply the NASD's suitability rule under Article III, Section 2(a) of the Rules of Fair Practice to transactions in exempted securities including government securities, except municipals; and (ii) provide guidance to members on their suitability obligations when making recommendations to institutional customers, of which the government securities markets has a particularly broad institutional component. The proposed rule change, as amended, will also further the above-purposes of the Act by: (i) Making clarifying amendments to certain sections and Interpretations under Articles III and IV of the Rules of Fair Practice relating to the government securities business; (ii) making technical changes to NASD By-Laws, Schedules of the By-Laws, the Rules of Fair Practice, and the Code of Procedure to replace references to provisions of the Government Securities Rules with references to the appropriate Rules of Fair Practice, and to delete the terms ''exempted security'' or ''exempted'' securities, or, replace these terms with the term ''municipal securities,'' as

[55] The research report must not recommend the use of the foreign broker-dealer to effect trades in any security, and the foreign broker-dealer must not initiate follow-up contact with the major U.S. institutional investors who receive the research, or otherwise induce or attempt to induce the purchase or sale of any security by those major U.S. institutional investors.

[56] If, however, the foreign broker-dealer already had a relationship with a registered broker-dealer that facilitated compliance with the direct contact exemption in the rule, the rule would require all trades resulting from the provision of research to be effected through that registered broker-dealer pursuant to the provisions of that exemption.

[57] *See* Securities Exchange Act Release No. 27017 (July 11, 1989), 54 FR 30013 (July 17, 1989).

[58] *Id*.

[59] Paragraph (b)(4) of Rule 15a–6 of the Exchange Act generally defines ''major U.S. institutional investor'' as a U.S. institutional investor with assets, or assets under management, in excess of $100 million, or a registered investment adviser with assets under management in excess of $100 million. Paragraph (b)(7) of Rule 15a–6 of the Exchange Act generally defines ''U.S. institutional investor'' as a registered investment company, bank, savings and loan association, insurance company, business development company, small business investment company or employee benefit plan defined in Rule 501(a)(1) of Regulation D under the Securities Act, a private business development company as defined in Rule 501(a)(2), an organization described in Section 501(c)(3) of the Internal Revenue Code, as defined in Rule 501(a)(3) or a trust defined in Rule 501(a)(7).

[60] *See* Securities Exchange Act Release No. 36383, *supra* note 2, at 54555.

[61] 15 U.S.C. § 78o–3.

applicable; and (iii) modifying references to SEC Rules 15c3–1 and 15c3–3 to reflect SEC amendments to those rules.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed Suitability Interpretation contained in the proposed rule change, as amended, is consistent with the intent of the Act as amended by the Government Securities Amendments.[62] The proposed Suitability Interpretation expands the suitability rule contained under Article III, Section 2(a) of the Rules of Fair Practice to all securities transactions, including transactions in exempted securities, except for municipals. While the proposed Suitability Interpretation acknowledges that a member's relationships with institutional customers may be different from the normal member/retail customer relationship, it does not unfairly discriminate against such institutional customers. The proposed rule change applies the suitability rule under Article III, Section 2 of the Rules of Fair Practice to both retail and institutional customers in connection with all securities transactions, other than municipals. The proposed Suitability Interpretation provides members with an appropriate analysis of their suitability obligations to institutional customers based on the institutional customer's capability to evaluate investment risk independently and the extent to which the customer is exercising independent judgement in evaluating the member's recommendation.[63]

On the basis of the foregoing, the NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received as to Amendment No. 3 to the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–95–39 and should be submitted by April 22, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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[62] The Association received one comment letter that argued that the proposed Suitability Interpretation distinguished between institutional and retail customers and, therefore, was contrary to the intent of the Government Securities Amendments. See Comment Letter No. 3, supra note 5.

[63] *See* H.R. 103–225, 103rd Cong., 1st Sess. (September 23, 1993).

[Release No. 34–36976; File no. SR–Phlx–96–07]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., To Adopt a Market Index Option Hedge

Exemption March 14, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 13, 1996, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to amend Commentary .01 to Phlx Rule 1001A to establish a hedge exemption from broad-based (market) index option position limits.

Specifically, the Phlx proposes to exempt from position and exercise limits[4] any position in a market index option that is hedged by share positions in at least 20 stocks, or securities convertible into such stock, in four industry groups comprising the index, of which no one component security accounts for more than 15% of the value of the portfolio hedging the index option position. Under the proposal, no position in a market index option may exceed two-times[5] the broad-based index option position specified in Phlx Rule 1001A(a).[6] In addition, the underlying value of the option position may not exceed the value of the underlying portfolio employed as the hedge. The proposed exemption would be available to public customers, as well as to firm and proprietary traders.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] On February 26, 1996, the Phlx filed an amendment to the rule proposal. *See* letter from Gerald D. O'Connell, First Vice President, Market Regulation and Trading Operations, Phlx, to Michael Walinskas, Branch Chief, Office of Market Supervision, Division of Market Regulation, Commission, dated February 26, 1996 (''Amendment No. 1''). Amendment No. 1 made several minor changes to the rule proposal in order to make it correspond to the final draft of the narrow-based (industry) index option hedge exemption that was recently approved for the Phlx by the Commission. *See* Securities Exchange Act Release No. 36858 (February 16,1 996), 61 FR 7295 (February 27, 1996) (File No. SR–Phlx–95–45).

[4] Position limits impose a ceiling on the number of option contracts which an investor or group of investors acting in concert may hold or write in each class of options on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls). Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class of options within five consecutive business days.

[5] For instance, if the position limit for a market index option is 25,000 contracts, an additional 50,000 contracts under this proposal would be permitted, for a total of 75,000 contracts.

[6] Under Phlx Rule 1001A(a), the Value Line Composite Index (''VLE''), the U.S. Top 100 Index (''TPX''), and the National Over-the-Counter Index (''XOC'') each have a position limit of 25,000 contracts, of which no more than 15,000 contracts can be in the nearest expiration month. The Phlx notes that the Big Cap Index (''MKT'') is no longer listed on the Exchange.

Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Phlx is proposing to adopt a broad-based index option hedge exemption under which broad-based index option positions hedged in accordance with the proposal would be entitled to exceed existing position limits by up to two-times above the limit. The purpose of the proposal is to establish a provision parallel to the hedge exemption for equity options [7] as well as the broad-based index option hedge exemptions that are in place on other option exchanges.[8]

In order to qualify for the exemption, the market index option position must be hedged by share positions in at least 20 stocks, or securities convertible into such stock,[9] in four industry groups comprising the index, of which no one component security accounts for more than 15% of the value of the portfolio hedging the index option position. Under the proposal, no position in a market index option may exceed two-times the broad-based index option position specified in Phlx Rule 1001A(a). In addition, the underlying value of the option position may not exceed the value of the underlying portfolio employed as the hedge.[10] In addition, under the proposal, exercise limits will continue to correspond to position limits, so that investors may exercise the number of contracts set forth as the position limit, as well as those contracts exempted by this proposal, during five consecutive business days.[11]

The Phlx notes that broad-based index option hedge exemptions are in place on other options exchanges. Generally, these index option hedge exemptions allow public customers to apply for position limit exemptions in broad-based index options that are hedged with exchange-approved qualified stock portfolios. A qualified portfolio is comparison of net long or short positions in at least 20 common stocks or securities readily convertible into such common stock, none of which accounts for more than 15% of the value of the portfolio.

The Phlx notes that the Chicago Board Options Exchange, Inc. (''CBOE''), in CBOE Rule 24.4, provides a broad-based index option hedge exemption for public customers holding positions in broad-based index options other than a.m.-settled, European-style Standard and Poor's (''S&P'') 500 Index options, and Quarterly Index Expirations (''QIXs'') and Capped-Style QIXs (''Q-CAPS'') on the S&P 500 Index. Under Interpretation and Policy .01 to CBOE Rule 24.4, exempted positions may not exceed 75,000 contracts (two-times above the regular position limit),[12] except as otherwise provided in CBOE Rule 24.4, Interpretation and Policies .02 and .03, and except that exempted combined positions in options based on the S&P/Barra Value Index and the S&P/Barra Growth Index may not exceed 65,000 same-side of the market options contracts.[13]

Similarly, Commentary .01 to the American Stock Exchange, Inc.'s (''Amex'') Rule 904C provides a broad-based index option position limit exemption for public customers who satisfy the criteria established by AMEX.[14]

In light of the Exchange's exerience with the equity option hedge exemption, as well as its review of the rules of the other options exchanges, the Phlx believes that a similar hedge exemption for its market index options is appropriate. The Phlx also believes that the proposed conditions for granting such an exemption are reasonable and in line with prior Commission-approved provisions.

According to the Phlx, trading volume for index options has markedly increased. In 1994, volume increased-two-fold over 1993, from 1,119,147 contracts to 2,456,685. In 1995, volume remained steady with over 2,783,043 contracts traded. The Phlx attributes the recent growth in trading and open interest to institutional trading, which, according to the Phlx, is typically hedged by baskets of the underlying stocks.

The Phlx proposes to exempt positions in broad-based options in a manner which balances the hedging needs of index options traders with the Exchange's obligation to maintain a fair and orderly market. The Phlx believes that a hedge exemption up to 75,000 contracts for broad-based index options would considerably enhance the attractiveness of these products for institutional traders, who would, in turn, trade more of the product in a hedged manner and thereby provide stabilizing liquidity in both the index options and the underlying securities.[15]

In 1989, the Commission approved a Phlx proposed hedge exemption for Utility Index options (''UTY''), on a pilot basis.[16] Although the UTY hedge

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[7] *See* Phlx Rule 1001, Commentary .07. *See also* Securities Exchange Act Release No. 35738 (May 18, 1995), 60 FR 27573 (May 24, 1995) (order approving permanent hedge exemption pilot programs) (File Nos. SR–Phlx–95–10, SR–Amex–95–13, SR–CBOE–95–13, SR–NYSE–95–04, and SR–PSE–95–05).

[8] *See infra* notes 12–14 and accompanying text.

[9] The Exchange permits the use of convertible securities in its equity option hedge exemption. *See* Securities Exchange Act Release No. 32174 (April 20, 1993), 58 FR 25687 (April 27, 1993) (order approving File No. SR–Phlx–92–22). Similarly, other options exchanges permit the use of convertible securities with respect to broad-based index option hedge exemptions.

[10] The value of the underlying portfolio is determined as follows: (1) the total market value of the net stock position; less (2) the value of: (a) any offsetting calls and puts in the respective index option; (b) any offsetting positions in related stock index futures or options; and (c) any economically equivalent positions.

The values of offsetting positions are determined by multiplying the number of opposite-side-of-the-market (offsetting) calls, puts, or futures contracts by the index value and by the index multiplier. Then, the value is subtracted from the market value of the portfolio. This number must be compared with the underlying value of the option position in excess of the position limit being hedged/exempted, which is calculated by multiplying the number of option contracts for which the exemption is sought by the index value and the multiplier; this value cannot exceed the value of the underlying portfolio.

[11] *See* Phlx Rule 1002A.

[12] Under CBOE Rule 24.4(a), the position limit for broad-based index options, other than Russell 2000 Index options and S&P/Barra Growth Index and S&P/Barra Value Index options, is 25,000 contracts on the same-side of the market. CBOE Rule 24.4(b), (c), and (d) contain separate position limit provisions for a.m.-settled, European-style option contracts on the S&P 500 Index, and QIXs and Q–CAPS on the S&P 500 Index, QIXs and Q–CAPS on the S&P 100 Index, and QIXs on the Russell 2000 index.

[13] CBOE Rule 24.4, Interpretation and Policy .02 provides a hedge exemptionf or certain positions in a.m-settled, European-style S&P 500 Index options, and QIXs and Q-CAPS on the S&P 500 Index. Specifically, Interpretation and Policy .02(d) provides that a customer's exempted position may not exceed 150,000 same-side of the market contracts in am.m.-settled S&P 500 Index options, and QIXs and Q–CAPS on the S&P 500 Index. Interpretation and Policy .02(b) states that a money manager may not hold in its aggregated accounts more than 250,000 exempted same-side of the market option contracts or, in a single account, more than 135,000 exempted same-side of the market option contracts.

[14] In addition, Amex Rule 904C, Commentary .02 provides a facilitation exemption for Institutional Index and MidCap Index options up to 100,000 and 75,000 contracts, respective.

[15] In support of this contention, the Phlx believes that the hedge exemption for S&P 100 Index (''OEX'') options, which permits positions up to 75,000 contracts (two times above the regular position limit), serves as a significant liquidity provider for that product.

[16] Specifically, the UTY hedge exemption provision exempted any position taken by a public customer in UTY options that was hedged by at least 10 UTY component stocks, of which no one component stock could account for more than 15% of the stock portfolio hedging the UTY position. *See* Securities Exchange Act Release No. 27486 (November 30, 1989), 54 FR 50675 (December 8, 1989) (order approving File No. SR–Phlx–89–27).

Continued

exemption pilot program applied only to customers, the Phlx believes that it is appropriate and necessary to expand the availability of the exemption beyond public customers. The Phlx believes that significant increases in the depth and liquidity of the market for these index options could result from permitting firm and proprietary traders to be eligible for the exemption. According to the Phlx, because customers rely, for the most part, on a limited number of proprietary traders to facilitate large-sized orders, not including such traders in the exemption effectively reduces the benefit of the exemption to customers. While large-sized positions in market index options are most commonly initiated by institutional trades hedging stock portfolios on behalf of public customers, the Phlx believes that proprietary traders should be afforded the same exemption so that they may fulfill their role as facilitators.

The Phlx also believes that the hedge exemption is necessary to better meet the needs of investors who use Phlx market index options for investment and hedging purposes. According to the Phlx, many institutional traders and portfolio managers deal in dollar amounts much greater than that permissible under current position limit levels and have expressed that Exchange position limits hamper their ability to fully utilize such index options. As a result, the Phlx believes that many index options are ineffective for such traders, who often turn to futures instruments where ample relief is already available.[17] Thus, the Phlx believes that the proposed hedge exemption should alleviate the situation where investors with substantial hedging needs are discouraged from participating in the options market due to existing position limits.

The Phlx believes that the proposed broad-based index option hedge exemption should not increase the potential for disruption or manipulation in the markets for the stocks underlying each index. The Phlx notes that this is because the proposal incorporates several surveillance safeguards, which the Phlx will employ to monitor the use of this exemption. Specifically, the Exchange will require that a form be filed by member firms and their customers who seek exemptions, in lieu of granting an automatic exemption. Moreover, the hedge exemption form must be kept current, with information updated as warranted. Any information concerning the dollar value and composition of the stock portfolio,[18] or its equivalent, the current hedged and aggregate options positions, and any stock index futures positions must be promptly provided to the Exchange. In addition, the Exchange's Market Surveillance Department will monitor trading activity in Phlx traded index options and the stocks underlying those indexes to detect potential frontrunning and manipulation abuses, as well as review such trading to ensure that the closing of positions subject to the exemption are conducted in a fair and orderly manner. On a daily basis, the Exchange's Market Surveillance Department will also monitor each option contract to ensure that it is hedged by the equivalent dollar amount of component securities.

The Phlx also notes that the proposal contains several specific safeguards. First, the hedge must consist of a previously established position in at least 20 of the stocks underlying the index, none of which may constitute more than 15% of the hedge portfolio, and must include stocks from at least four separate industry groups.[19] Thus, not only does the basket of stocks comprising the hedge resemble the underlying index, but it also ensures that unwinding such positions will be spread out among a wide and disparate group of stocks.

Second, the proposal provides a ceiling on the maximum size of the options position by providing the positions established under the proposal may not exceed two-times the limits set forth in Exchange Rule 1001A(a).[20] In addition, the Exchange may determine to grant a position limit exemption for less than the maximum of two-times above the limit.

Third, both the options and stock positions must be initiated and liquidated in an orderly manner. This means that a reduction of the options position must occur at or before the corresponding reduction in the stock portfolio position. Moreover, initiating or liquidating positions should not be conducted in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes or with a view toward taking advantage of any differential in price between a group of securities and an overlying stock position. The Exchange's Market Surveillance Department must be notified in writing for approval in advance of initiating or liquidating any such position as well as of any material change in the portfolio or futures positions which materially affects the unhedged value of the qualified portfolio.

Fourth, any securities that are used as a hedge pursuant to the rule may not also be used to hedge other option positions.

Fifth, the portfolio must be previously established and the options must be carried in an account with an Exchange member.

Sixth, if any member or member organization carrying an account which has received an exemption pursuant to this rule has reason to believe that as a result of an opening transaction, the position telescoping provisions of the rule, or the execution of a clearing member trade assignment agreement transaction (''CMTA''),[21] that its customer, acting alone or in concert with others, directly or indirectly, violates this position limit exemption, then the member or member organization has violated this rule. Violation of any of these provisions, absent reasonable justification or excuse, will result in withdrawal of the hedge exemption and subsequent denial of an application for a hedge exemption.

Lastly, the value of the market index option position cannot exceed the dollar value of the underlying portfolio. The purpose of this requirement is to further ensures that sock transactions are not used to manipulate the market in a manner benefitting the option position.

This provision was approved for a one-year pilot program, which expired on November 30, 1990.

[17] The Commission has recognized that under the rules promulgated by the Commodity Futures Trading Commission (''CFTC''), futures positions that are deemed to be bona fide hedging transactions are exempt from position limit rules. *See* Securities Exchange Act Release No. 25739 (May 24, 1988), 53 FR 20204 (June 2, 1988) (order approving File No. SR–CBOE–87–25).

[18] The Phlx notes that as the dollar value of the hedging portfolio fluctuates, the number of exempt contracts may need to be adjusted.

[19] To determine the share amount of each component required to hedge an exempt option position: index value × index multiplier × component's weighting = dollar amount of component. That amount divided by price = number of shares of component. Conversely, to determine how many options can be purchased based on a certain portfolio, divide the dollar amount of the basket by the index value × the index multiplier.

[20] The Exchange notes that it is adopting the language ''two times above the limit'' to signify ''in addition to'' the current position limit. For instance, where the position limit is 25,000 contracts, an additional 50,000 hedged contracts would be permissible. This language parallels a recent change by another exchange. *See* Securities Exchange Act Release No. 36609 (December 20, 1995), 60 FR 67002 (December 27, 1995) (notice of File No. SR–CBOE–95–68). This exemption, however, may be used in addition to any other position limit exemption that is available under the Exchange's rules.

[21] A CMTA agreement is an agreement between a Phlx Options Clearing Corporation (''OCC'') member and a non-Phlx OCC member which enables the non-Phlx OCC member to have trades executed on its behalf on the Exchange by the Phlx member.

2. Statutory Basis

The Phlx believes that the proposed market index hedge exemption should increase the depth and liquidity of the broad-based index options market and allow more effective hedging with underlying stock portfolios without increasing the potential for market manipulation or disruption, consistent with the purposes of position limits. For the same reasons, the Exchange believes that exercise limits should correspond to the position limit exemption granted by the proposal. Accordingly, the Phlx believes that the proposed rule change is consistent with Section 6(b) of the Act in general, and with Section 6(b)(5) in particular,[22] in that it is designed to promote just and equitable principles of trade, and, by promoting liquidity in the index options marketplace, will serve to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Phlx consents, the Commission will:

A. by order approve the proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–96–07 and should be submitted by April 11, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–6764 Filed 3–20–96; 8:45 am]

BILLING CODE 8010–01–M

[22] 15 U.S.C. § 78f(b)(5) (1988).

[23] 17 CFR 200.30–3(a)(12) (1994).

DEPARTMENT OF STATE

[Public Notice No. 2358]

Advisory Committee on International Communications and Information Policy; Public Meeting

The Department of State is holding the fourth meeting of its Advisory Committee on International Communications and Information Policy. The Committee was reestablished on August 11, 1994, in order to provide a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communication services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international organizations with regard to communications and information, and developing country interests.

The 24-person committee was appointed by Ambassador Vonya B. McCann, United States Coordinator for International Communications and Information Policy, U.S. Department of State, and serves under the Chairmanship of Ed Black, President, Computer & Communications Industry Association.

The purpose of this meeting will be to follow-up on the recent creation of working groups on various issues that will help chart the future direction and work plan of the committee. The members will look at the substantive issues on which the committee should focus, as well as specific countries and regions of interest to the committee.

The committee will follow the procedures prescribed by the Federal Advisory Committee Act (FACA). Meetings will be open to the public unless a determination is made in accordance with the FACA Section 10(d), 5 U.S.C. 552b(c) (1) and (4) that a meeting or a portion of the meeting should be closed to the public.

This meeting will be held on Friday, April 12, 1996, from 9:30 a.m.–12 noon in Room 1107 of the Main Building of the U.S. Department of State, located at 2201 ''C'' Street, NW., Washington, DC 20520. While the meeting is open to the public, admittance to the State Department Building is only by means of a pre-arranged clearance list. In order to be placed on the pre-clearance list, please provide your name, title, company, social security number, and date of birth to Shirlett Brewer at (202) 647–5233 or by fax at (202) 647–5957. All attendees must use the ''C'' Street entrance. One of the following valid ID's will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. Government agency ID.

For further information, contact the Executive Secretary of the committee, at (202) 647–5385.

Dated: March 12, 1996.

Timothy C. Finton,

Executive Secretary, Advisory Committee for International Communications and Information Policy.

[FR Doc. 96–6753 Filed 3–20–96; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 USC Chapter 35).

DATES: March 15, 1996.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503. If you anticipate submitting substantive comments, but find that more than 30 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Judith Street; (202) 267–9895; ABC–100; 800 Independence Avenue, S.W., Washington, DC 20591.

SUPPLEMENTARY INFORMATION: Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the Federal Register, listing those information collection requests submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Items Submitted to OMB for Review

The six following information collection requests were submitted to OMB on March 14, 1996:

1. OMB No: 2120–0003

Administration: Federal Aviation Administration (FAA)

Title: Malfunction or Defect Report.

Need for Information: Under 49 U.S.C. Chapter 447, Subsection 44702, as amended, empowers the Secretary of Transportation to issue certificates for air taxi operators and repair stations, respectively, and to prescribe such terms, conditions, and limitations on those certificates as necessary to ensure safety in air transportation. Submission of Malfunction or Defect Reports are necessary to ensure safety.

Proposed Use of Information: The FAA needs this information to determine inservice performance of aeronautical productions. Collection of this data permits the FAA to evaluate its certification standards, maintenance programs, and regulatory requirements since their effectiveness is reflected in the number of equipment failures or lack thereof. When defects are reported, which are likely to exist on other products of the same or similar design, the information is used as a basis for Airworthiness Directive (AD).

Frequency: On occasion.

Burden Estimate: 6,147 hours.

Respondents: Repair stations certificated under part 145 and Air Taxi operators certificated under part 135.

Number of Respondents: 20,940.

Form(s): one.

2. OMB No: 2120–0005.

Administration: Federal Aviation Administration (FAA).

Title: General Operating Rules—FAR 91.

Need for Information: The reporting and recordkeeping requirements of Federal Aviation Regulation (FAR) Part 91, General Operating and Flight Rules, are authorized by Part A of Subtitle VII of the Revised Title 49 of the United States Code. FAR Part 91 prescribes rules governing the operation of aircraft (other than moored balloons, kites, rockets and unmanned free balloons) within the United States. The reporting and recordkeeping requirements prescribed by various sections of FAR Part 91 are necessary for FAA to assure compliance with these provisions.

Proposed Use of Information: The FAA needs this information to determine compliance. Also because Subtitle VII of Revised Title 49 U.S.C. authorizes the issuance of regulations governing the use of navigable airspace. 14 CFR 91 prescribes regulations governing the general operation and flight of aircraft.

Frequency: On occasion.

Burden Estimate: 231,064 hours.

Respondents: Individual airmen, state or local governments and businesses.

Number of Respondents: See enclosure.

Form(s): None.

3. OMB No: 2120–0042.

Administration: Federal Aviation Administration (FAA).

Title: Aircraft Registration.

Need for Information: Public Law 103–272 states that all aircraft must be registered before they may be flown. The registration system provides identification of all civil aircraft in the United States. The registration record also provides evidence of ownership which may be used in court if there is a controversy over ownership.

Proposed Use of Information: The FAA needs this information to register an aircraft or hold an aircraft in trust. The information required to register and prove ownership of an aircraft is required by any person wishing to register an aircraft.

Frequency: On occasion.

Burden Estimate: 73,847.50 hours.

Respondents: Individuals, businesses, state and local governments.

Number of Respondents: 73,002.

Form(s): Nine.

4. OMB No: 2120–0514.

Administration: Federal Aviation Administration (FAA).

Title: Aviation Insurance.

Need for Information: Under 49 U.S.C. Chapter 443 the FAA is authorized to provide aviation insurance in emergency situations in which the President determines that continuation of air service is in the foreign policy interest of the United State and the FAA Administrator has determined that aviation insurance is not available on reasonable terms and conditions from commercial sources.

Proposed Use of Information: The FAA needs this information to determine when insurance is not available from commercial sources.

Frequency: On occasion.

Burden Estimate: 68 hours.

Respondents: Businesses or other for profit.

Number of Respondents: 45.

Form(s): None.

5. OMB No: 2120–0517.

Administration: Federal Aviation Administration (FAA).

Title: FAR Part 150–Airport Noise Compatibility Planning.

Need for Information: Sections 103(a)(1) and 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (ASNA), as amended, permit ''airport operators'' to voluntarily submit noise exposure maps and noise compatibility programs to the FAA.

Proposed Use of Information: The FAA needs this information to approve airport operators noise compatibility programs eligible for a 10-percent set-aside of discretionary grant funds under the FAA Airport Improvement Program.

Frequency: On occasion.

Burden Estimate: 54,900 hours.

Respondents: Airport operators who voluntarily submit maps and noise compatibility programs to FAA for review.

Number of Respondents: 17.

Form(s): None.

6. OMB No: 2120–0570.

Administration: Federal Aviation Administration (FAA).

Title: Simulator Rule/Part 142, Certificated Training Centers.

Need for Information: Under 49 U.S.C. CHAPTER 447 states that, applications for certificates under this title shall be in such form, contain such information, and be filed and served in such a manner as the FAA Administrator may prescribe.

Proposed Use of Information: The FAA needs this information to determine compliance with airmen certification and testing to ensure safety.

Frequency: Annually.

Burden Estimate: 5,450 hours.

Respondents: Business or other for profit.

Number of Respondents: 42.

Form(s): Requesting approval from OMB.

Issued in Washington, D.C., on March 25, 1996.

Phillip Leach,

Computer Specialist, Information Resource Management (IRM) Strategies Division.

[FR Doc. 96–6811 Filed 3–20–96; 8:45 am]

BILLING CODE 4910–13–P

Aviation Proceedings; Agreements Filed During the Week Ending March 15, 1996

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–96–1139.

Date filed: March 11, 1996.

Parties: Members of the International Air Transport Association.

Subject: COMP Reso 024f, Local Currency Fare Changes—Zimbabwe, Intended effective date: Upon Government Approval.

Docket Number: OST–96–1140.

Date filed: March 11, 1996.

Parties: Members of the International Air Transport Association.

Subject: Comp Telex Mail Vote 785, MV 785 (Currency Adjustment—Hong Kong dollar), Intended Effective date: April 1, 1996.

Docket Number: OST–96–1155.

Date filed: March 15, 1996.

Parties: Members of the International Air Transport Association.

Subject: TC3 Telex Mail Vote 786, Osaka-Ulan Bator fares, r-1—043i, r-3—063i, r-5—076t, r-2—053i, r-4—063ii, r-6—085hh, r-7—087k.

Intended effective date: April 27, 1996.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–6856 Filed 3–20–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

[Summary Notice No. PE–96–12]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and dispositions of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), disposition of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 4, 1996.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Docket No. 27609.

Petitioner: M. Shannon & Associates.

Sections of the FAR Affected: 14 CFR 91.9 and 91.531.

Description of Relief Sought: To permit M. Shannon & Associates and Falcon 10/100 aircraft operators who hold a written license agreement from M. Shannon & Associates to operate these aircraft in single-pilot operations.

Docket No.: 28069.

Petitioner: Delta Airlines, Inc.

Sections of the FAR Affected: 14 CFR 108.23(b).

Description of Relief Sought: To allow Delta Airlines, Inc., to conduct security training on a calendar year basis rather than every 12 calendar months.

[FR Doc. 96–6747 Filed 3–20–96; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–96–13]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemptions received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before April 10, 1996.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G,

FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on March 15, 1996.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 26821.

Petitioner: MCI Telecommunications.

Sections of the FAR Affected: 14 CFR 61.57(d).

Description of Relief Sought: To amend Exemption No. 5742, as amended, to allow MCI Telecommunications pilots in command to increase the interval between the night takeoff and landing recency-of-experience requirements from 90 days to 7 calendar months, subject to certain conditions and limitations. One of the proposed conditions would require each pilot in command to complete a training program specific to night landings, takeoffs, and night operations before operating under the exemption and at 7-month intervals.

Docket No.: 28465.

Petitioner: Comair Aviation Academy, Inc.

Sections of the FAR Affected: 14 CFR 141.15.

Description of Relief Sought: To permit Comair Aviation Academy, Inc., to operate an FAA-approved part 141 satellite base in Taipei, Taiwan, offering interested U.S. citizens and ''others'' in Taiwan the opportunity to attend an FAA-approved part 141 private pilot ground training course.

Docket No.: 28470.

Petitioner: Compoende Aeronáutica Ltda.

Sections of the FAR Affected: 14 CFR 145.47(b).

Description of Relief Sought: To permit Compoende Aeronáutica Ltda., an FAA-certificated foreign repair station located at São José dos Campos, São Paulo, Brazil, (FAA Certificate No. C50Y672J) to substitute the calibration standards of the Brazilian National Standards Laboratory, Instituto Nacional de Metrologia, Normalizacão e Qualidade Industrial, for the calibration standards of the U.S. National Institute of Standards and Technology for its inspection and test equipment.

[FR Doc. 96–6748 Filed 3–20–96; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Coordinating Council on April 14, 1996. The session is expected to focus on: (1) Federal Intelligent Transportation Systems (ITS) reports; (2) ITS AMERICA President's report; (3) Dedicated Short Range Communications Standard; (4) ATMS R&D Program Review Update; (5) Presentation on Final Privacy Principles; (6) Report on Adherence/ Enforcement Strategies; and, (7) Update on World Congress activities. ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities. The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA), 5USC app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Coordinating Council of ITS AMERICA will meet on April 14 from 1:00 p.m. to 5:00 p.m. (Eastern Standard time).

ADDRESSES: Sheraton Washington Hotel, 2660 Woodley Road, N.W., Washington, D.C. 20008, (202) 328–2000.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue, SW., Suite 800, Washington, D.C. 20024. Persons desiring further information or to request to speak at this meeting should contact Mr. Bill Collier at ITS AMERICA by telephone at (202) 484–4131, or by FAX at (202) 484- 3483. The DOT contact is Mr. Whitey Metheny, FHWA, HVH–1, Washington, D.C. 20590, (202) 366–2835. Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except for legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: March 14, 1996.

Christine M. Johnson,

Director, ITS Joint Program Office.

[FR Doc. 96–6796 Filed 3–20–96; 8:45 am]

BILLING CODE 4910–22–P

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Board of Directors on April 16, 1996. The session is expected to focus on: (1) Federal Report by Mort Downey; (2) Report of the DSRC Task Force; (3) Report of the Futures Group; (4) Presentation of Final Privacy Principles; (5) Update on the ITS America Sixth Annual Meeting; and, (6) Report on Adherence/Enforcement Strategies. ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities. The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA) 5 USC app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Board of Directors of ITS AMERICA will meet on April 16 from 1:30 p.m. to 5:30 p.m.

ADDRESSES: Sheraton Washington Hotel, 2660 Woodley Road, NW., Washington, DC 20008, (202) 328–2000.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue SW., Suite 800, Washington, DC 20024. Persons desiring further information or to request to speak at this meeting should contact Mr. Bill Collier at ITS AMERICA by telephone at (202) 484–4131 or by FAX at (202) 484–3483. The DOT contact is Mr. Whitey Metheny, FHWA, HVH–1, Washington, DC 20590, (202) 366–2835. Office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except for legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: March 14, 1996.

Christine M. Johnson,

Director, ITS Joint Program Office.

[FR Doc. 96–6797 Filed 3–20–96; 8:45 am]

BILLING CODE 4910–22–P

National Highway Traffic Safety Administration

[Docket No. 96–23; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1986 Volkswagen Golf Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1986 Volkswagen Golf passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1986 Volkswagen Golf that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) It is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is April 22, 1996.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

J.K. Motors of Kingsville, Maryland (''J.K.'') (Registered Importer 90–006) has petitioned NHTSA to decide whether 1986 Volkswagen Golf passenger cars are eligible for importation into the United States. The vehicle which J.K. believes is substantially similar is the 1986 Volkswagen Golf that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Volkswagenwerke A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1986 Volkswagen Golf to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that the non-U.S. certified 1986 Volkswagen Golf, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1986 Volkswagen Golf is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * *,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 107 *Reflecting Surfaces,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 203 *Impact Protection for the Driver From the Steering Control System,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 211 *Wheel Nuts, Wheel Discs and Hubcaps,* 212 *Windshield Retention,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 301 *Fuel System Integrity,* 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that the non-U.S. certified 1986 Volkswagen Golf complies with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked ''Brake'' for a lens with an ECE symbol on the brake failure indicator lamp; (b) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* installation of a seat belt warning buzzer. The petitioner states that the vehicle is equipped with shoulder and lap belts in all outboard seating positions and with a lap belt in the rear center seating position that are identical to those found on its U.S. certified counterpart.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW.,

Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March 18, 1996.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 96–6831 Filed 3–20–96; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 96–24; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1985 Maserati Bi-Turbo Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1985 Maserati Bi-Turbo passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1985 Maserati Bi-Turbo that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is April 22, 1996.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

J.K. Motors of Kingsville, Maryland (''J.K.'') (Registered Importer 90–006) has petitioned NHTSA to decide whether 1985 Maserati Bi-Turbo passenger cars are eligible for importation into the United States. The vehicle which J.K. believes is substantially similar is the 1985 Maserati Bi-Turbo that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1985 Maserati Bi-Turbo to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that the non-U.S. certified 1985 Maserati Bi-Turbo, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1985 Maserati Bi-Turbo is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * *,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 107 *Reflecting Surfaces,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 203 *Impact Protection for the Driver From the Steering Control System,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 211 *Wheel Nuts, Wheel Discs and Hubcaps,* 212 *Windshield Retention,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that the non-U.S. certified 1985 Maserati Bi-Turbo complies with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked ''Brake'' for a lens with an ECE symbol on the brake failure indicator lamp; (b) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* rewiring of the power window

system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* installation of a seat belt warning buzzer. The petitioner states that the vehicle is equipped with shoulder and lap belts in all seating positions.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March 18, 1996.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 96–6832 Filed 3–20–96; 8:45 am]

BILLING CODE 4910–59–M

Research and Special Programs Administration

[Docket No. PDA–14(R)]

Application by National Tank Truck Carriers, Inc. for a Preemption Determination as to Hazardous Materials Requirements Imposed by the City of El Paso, Texas

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice dismissing application and closing the docket.

APPLICANT: National Tank Truck Carriers, Inc. (NTTC).

LOCAL LAW AFFECTED: Title 9, Chapter 9.56 of the City of El Paso, Texas Municipal Code requiring motor carriers or operators that transport hazardous materials to obtain a permit based on inspections which are conducted only during limited time periods, from November 1 through December 31 of each year.

APPLICABLE FEDERAL REQUIREMENTS: Federal hazardous materials transportation law, 49 U.S.C. § 5101 et seq., and the Hazardous Materials Regulations, 49 CFR Parts 171–180.

SUMMARY: The application for a determination of preemption is dismissed, and this docket is closed because the City of El Paso passed an ordinance that deleted the permit requirement for transportation of hazardous materials in El Paso.

FOR FURTHER INFORMATION CONTACT: Karin V. Christian, Attorney, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001 (Tel. No. [202] 366–4400).

SUPPLEMENTARY INFORMATION: On December 10, 1995, NTTC applied for a determination that the Federal hazardous material transportation law preempts certain provisions of Chapter 9.56 of the City of El Paso, Texas Municipal Code requiring motor carriers and operators transporting hazardous materials to obtain permits based on inspections conducted only during limited periods of time, from November 1 through December 31 of each year.

On January 19, 1996, RSPA published a Public Notice and Invitation to Comment (Notice) on NTTC's application. 61 FR 1432. Five comments were received in response to the Notice.

On February 15, 1996, the Office of the City Attorney of the City of El Paso forwarded a copy of an ordinance amendment to RSPA. This amendment deleted the permit requirement for transportation of hazardous materials in El Paso. The amendment was introduced at an El Paso City Council meeting on February 13, 1996 and on February 27, 1996, the City Council approved the ordinance amendment deleting the permit requirement.

After receiving a copy of the approved amended ordinance, NTTC submitted a written request to RSPA on March 7, 1996, withdrawing NTTC's application for a preemption determination and stating that the amendment has rendered moot its concerns. Therefore, NTTC's application is dismissed, and the docket is closed.

Issued in Washington, DC on March 15, 1996.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 96–6833 Filed 3–20–96; 8:45 am]

BILLING CODE 4910–60–P

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions or applications to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''X'' denote a modification request. Application numbers with the suffix ''P'' denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before April 5, 1996.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No. and Applicant	Renewal of exemption
8125–M: Compagnie Des Containers Reservoirs, 2 Cedex, FR[1]	8125
9769–M: Federal Aviation Administration (Alaska Region), Anchorage, AL[2]	9769

Application No. and Applicant	Renewal of exemption
9926–M: Implementos Agricolas LaLa, S.A., S.A. Durango, ME[3] ...	9926
10814–M: Lorad Industrial Imaging, Danbury, CN[4]	10814
11005–M: Pressure Technology, Inc., Hanover, MD[5]	11005
11055–M: Rollins CHEMPAK Inc., Wilmington, DE[6]	11055
11171–M: Dart Container Corp. of PA, Leola, PA[7]	11171
11248–M: HAZMATPAC, Houston, TX[8]	11248
11432–M: Western Atlas International, Houston, TX[9]	11432

[1] To modify the exemption to provide for the transportation in commerce of trimethylchlorosilane, Class 3, as an additional class of material for shipment in non-DOT specification IMO Type 5 portable tanks.

[2] To modify the exemption to provide for cargo aircraft as an additional mode of transportation for shipment of lab-packs.

[3] To modify the exemption to provide for an alternative processing method of non-DOT specification cylinders and provide for an additional size cylinder with a service pressure of 2200 psi.

[4] To modify the exemption to provide for a change in the shipping container used to transport industrial x-ray instrumentation containing nonliquefied sulfur hexafluoxide.

[5] To modify the exemption to provide for an additional design non-DOT specification fiber reinforced plastic (FRP) full composite aluminum cylinders.

[6] To modify the exemption to include all materials meeting the definition of a toxic material that is an inhalation hazard, Zone A, as specifically listed in 49 CFR 172.101 and additional packaging of lab packs.

[7] To modify the exemption to provide for unlimited reuse flexible bulk bags, increase testing to minimum 1,000 lots and authorize reuse of repaired IBCs.

[8] To modify the exemption to provide an optional type obsorbent material in specially designed combination type packaging for transporting limited quantities of certain hazardous materials.

[9] To modify the exemption to provide for the use of IME 22 container as the outer packaging for a combination of detonators or igniters.

Application No. and applicant	Parties to exemption
4453–P: IRECO of Florida, Inc., Miramar, FL	4453
7774–P: Pomrenke Wireline Services, Inc., Rock Springs, WY	7774
8554–P: IRECO of Florida, Inc., Miramar, FL	8554
9275–P: Bayer Corporation (formerly Miles, Inc., Pittsburgh, PA	9275
9617–P: John Joseph, Inc., Ringwood, NJ	9617
9617–P: Explosives Supply, Inc., Ringwood, NJ	9617
9723–P: Autumn Industries, Inc., Warren, OH	9723
9723–P: Pollution Solutions of Vermont, Inc. (PSOV), Williston, VT ..	9723
9769–P: Tri-State Motor Transit Co., Joplin, MO	9769
9769–PM: Federal Aviation Administration (Alaska Region), Anchorage, AL[1]	9769
9769–P: EOG Environmental, Inc., Milwaukee, WI	9769
9769–P: HazMat Environmental Group, Inc., Buffalo, NY	9769
10001–P: Wakeman Industries, Inc., Charlestown, NH	10001
10031–P: Air Products and Chemicals, Inc., Allentown, PA	10031
10441–P: Erickson, Inc., Richmond, CA	10441
10441–P: Autumn Industries, Inc., Warren, OH	10441
10589–P: Occidental Chemical Corporation, Deer Park, TX	10589
10798–P: Niacet Corporation, Niagara Falls, NH	10798
10818–P: T.J. Egan Waste Systems, Bloomfield, NJ	10818
10933–P: Safeway Chemical Transportation, Inc., Wilmington, DE	10933
10933–P: Republic Environmental Systems (Transp. Group), Hatfield, PA	10933
10933–P: Tri-State Motor Transit Co., Joplin, MO	10933
11043–P: Erickson, Inc., Richmond, CA	11043
11055–P: SET Environmental, Inc., Wheeling, IL	11055
11055–P: Safeway Chemical Transportation, Inc., Wilmington, DE	11055
11156–P: John Joseph, Inc., Ringwood, NJ	11156
11156–P: Explosives Supply, Inc., Ringwood, NJ	11156
11200–P: U.S. Department of Defense, Falls Church, VA	11200
11207–P: NIPSCO Industries Companies, Hammond, IN	11207
11294–P: Tri-S Inc., Ellington, CT ...	11294
11294–P: United States Pollution Control, Inc., Columbia, SC	11294
11294–P: Laidlaw Environmental Services (Northeast), Inc., Columbia, SC	11294
11294–P: Laidlaw Environmental Services (FS), Inc., Columbia, SC	11294
11294–P: Laidlaw Environmental Services of Illinois, Inc., Columbia, SC	11294
11294–P: Laidlaw Environmental Services of California, Inc., Columbia, SC	11294
11294–P: Laidlaw Environmental Services (TES), Inc., Columbia, SC	11294
11294–P: Laidlaw Environmental Services (TG), Inc., Columbia, SC	11294
11294–P: Laidlaw Environmental Services (TS), Inc., Columbia, SC	11294
11294–P: Bryson Industrial Services, Inc., Columbia, SC	11294
11294–P: Autumn Industries, Inc., Warren, OH	11294
11294–P: Tri-State Motor Transit Co., Joplin, MO	11294
11294–P: Pollution Solutions of Vermont, Inc. (PSOV), Williston, VT ..	11294
11373–P: SOCO-Lynch Corporation, Los Angeles, CA	11373
11373–P: Southchem, Inc., Durham, NC	11373
11373–P: Textile Chemical Company, Inc., Reading, PA	11373
11458–P: Carter-Wallace, Inc., Cranbury, NJ	11458
11588–P: CAL–VA, Inc., Chantilly, VA	11588
11588–P: City Medical Wastes Services, Hamtramck, MI	11588
11588–P: Laidlaw Medical Services, Inc., Haverhill, MA	11588
11588–P: Waste Management of Ohio, Livonia, MI	11588
11588–P: Medico Environmental Services, Inc., Clearwater, FL	11588
11588–P: Trans Med, Ltd., Ronkonkoma, NY	11588
11588–P: A–1 Medical Waste Removal, Inc., Staten Island, NY	11588
11588–P: Stericycle, Deerfield, IL	11588
11588–P: Med Compliance Service, Inc. of Texas, El Paso, TX	11588

[1] To modify the exemption to provide for cargo aircraft as an additional mode of transportation for shipment of lab-packs.

This notice of receipt of applications for modification of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on March 15, 1996.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 96–6806 Filed 3–20–96; 8:45 am]

BILLING CODE 4910–60–M

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special programs Administration, DOT.

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulation (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is

indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before April 22, 1996.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT:

Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application No. and applicant	Regulation(s) affected	Nature of exemption thereof
11636–N: National Independent Parts Cleaners Association, Canby, OR.	49 CFR 173.150(f)(3)(vii), 173.150(f)(3)(vii), 173.28(b)(2), 173.28(b)(2).	To authorize the transportation in commerce of reused 1A2 steel drums without leak proofness test for use in transporting waste combustible liquids. (mode 1)
11638–N: Williamette Industries, Inc., Charlotte, NC.	49 CFR 178.522(b)(4)(5)	To authorize the transportation in commerce of corrosive or flammanble liquids in non-DOT specification composite package similar to 6HG2 not to exceed 55-gallon. (modes 1, 3)
11644–N: United States Can Company, Elgin, IL.	49 CFR 173.1200(a)(8), 173.304(e), 173.306(a), 178.33a.	To authorize the transportation in commerce of a non-DOT specification three-piece inside metal container with welded side seam and double seamed ends comparable to DOT-Specification 2Q for use in transporting R–134a (1, 1, 2 tetrafluoroethane). (modes 1, 2, 3, 4)
11645–N: Chemical Products Corp., Cartersville, GA.	49 CFR 173.212, 173.213	To authorize the transportation in commerce of various Class 8 material in non-DOT specification multi-ply paper bags in 50 pounds or 100 pounds lots until current inventories are depleted. (modes 1, 2)
11646–N: Barton Solvents Inc., Des Moines, IA.	49 CFR 172.203(a), 172.301(c), 177.834(h).	To authorize the unloading of hazardous materials from drums and/or intermediate bulk containers without removal from motor vehicles. (mode 1)
11647–N: Taylor-Wharton Co., Harrisburg, PA.	49 CFR 178.37–4	To eliminate the requirement for any cylinder made by the billet piercing process to be inspected after the parting. (modes 1, 2, 3, 4, 5)
11648–N: Ill. Dept. of Nuclear Safety, Springfield, IL.	49 CFR 173.421(b)	To authorize the transportation in commerce of emergency response instrument kits that contain radioactive material that exceed the limited quantity radiation level. (mode 1)
11649–N: VTG USE, Inc., West Chester, PA.	49 CFR 178.245–1, 2(b)	To authorize the manufacture, mark and sale of non-DOT specification containers equipped with man hole openings located in the rear side of the tank and the loading/discharge valve openings grouped on the right hand side of the tanks for use in transporting freon. (modes 1, 2)
11651–N: Bayer Corp., Pittsburgh, PA.	49 CFR 173.241(b)	To authorize the transportation in commerce of self-hearing solid, organic, Division 4.2 material in non-DOT specification sift-proof cargo tanks. (mode 1)
11652–N: Best Foods, Inc., Englewood Cliffs, NJ.	49 CFR 172.203(a), 173.150(b), 173.152(b), 173.154(b), 173.155(b), 173.306(a) & (b), Appendix B to subpart B of Part 107.	To authorize the transportation in commerce of display packs of consumer commodities in packages that exceed the gross weight limit. (mode 1)
11653–N: Phillips Petroleum Co., Bartlesville, OK.	49 CFR 174.9	To authorize the transportation in commerce of a empty tank car with defective heater coils (PSPX 517) last contained a Class 8 material. (mode 2)
11654–N: Hoechst Celanese Corp., Dallas, TX.	49 CFR 172.203(a), 173.31(c)(1), 179.13, Appendix B to Subpart B, Par. (2).	To authorize the transportation in commerce of certain Class 3 material in DOT 105J tank cars with a maximum gross weight greater than 183,000 but not greater than 184,000. (mode 2)

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on March 15, 1996.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

[FR Doc. 96–6807 Filed 3–20–96; 8:45 am]

BILLING CODE 4910–60–M

Surface Transportation Board [1]

[STB Docket No. AB–55 (Sub-No. 523X)]

CSX Transportation, Inc.—Abandonment Exemption—in Raleigh County, WV

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately 6.23 miles of its line of railroad between milepost CAQ–13.72 at Stotesbury and milepost CAQ–19.95 at Stone Coal Junction, in Raleigh County, WV.[2]

CSXT has certified that: (1) No local traffic has moved over the line for at

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903.

[2] In *CSX Transportation, Inc.—Abandonment Exemption— In Raleigh County, WV,* Docket No. AB–55 (Sub-No. 394X), a notice of exemption was served on September 21, 1991, of CSXT's abandonment of it's line segment between milepost CAQ–5.45 at Pemberton, and milepost CAQ–13.72, at Stotesbury.

least 2 years; (2) overhead traffic that formerly moved over this line is now moving via CSXT over a leased NS line parallel to this line;[3] (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 20, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[4] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[5] and trail use/rail banking requests under 49 CFR 1152.29[6] must be filed by April 1, 1996. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 10, 1996, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Charles M. Rosenberger, Senior Counsel, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

CSXT has filed an environmental report which addresses the abandonments effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 26, 1996. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: March 13, 1996.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–6827 Filed 3–20–96; 8:45 am]

BILLING CODE 4915–00–P

[3] *See CSX Transportation, Inc.—Lease and Operation Exemption—Norfolk and Western Railway Company,* Finance Docket No. 32768 (ICC served Oct. 27, 1995).

[4] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[5] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[6] The Board will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

[Docket No. AB–33 (Sub-No. 70)]

Union Pacific Railroad Company—Abandonment—Wallace Branch, ID

AGENCY: Surface Transportation Board, DOT.

ACTION: Extension of comment filing period.

SUMMARY: The Rails to Trails Conservancy seeks the issuance of a certificate of interim trail use under section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d), for a 71.5-mile rail line of Union Pacific Railroad Company between milepost 16.5, near Plummer, and milepost 7.6, near Mullan, via milepost 80.4/0.0 near Wallace, in Benewah, Kootenai, and Shoshone Counties, ID. The ICC issued a notice on December 29, 1995 (60 FR 67364) to request comments from all interested parties, agencies, and members of the public as to whether there is any impediment to the issuance of Trails Act authority in the unusual circumstances of this case. Comments were originally due on January 29, 1996. At the request of the Environmental and Natural Resources Division of the United States Department of Justice (DOJ), acting on behalf of the Departments of Interior and Agriculture, the Board extended the comment period for 45 days to March 14, 1996.

DOJ now requests an additional 6 month period within which to file its comments in order to conduct a natural resource damages assessment. Further, DOJ states that the assessment must consider not only the environmental but also the potential human health effects of bringing recreators into the area. DOJ states that the Coeur d'Alene Tribe supports the extension and that the Union Pacific Railroad Company will not oppose it. The Rails-to-Trails Conservancy opposes any extension.

While the Board supports the pursuit of negotiated resolutions, the Board does not favor granting lengthy extensions of time in established procedural schedules, especially where, as here, a prior extension has been granted. The Board will grant a 2 month extension of the comment period until May 14, 1996. DOJ is directed to report to the Board by May 1, 1996 on the status of its efforts to negotiate settlement of certain issues.

DATES: The report is due by May 1, 1996 and comments are due by May 14, 1996.

ADDRESSES: An original and 10 copies of the report and all comments, referring to Docket No. AB–33 (Sub-No. 70), should be filed with the Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of the report and all comments must be served on all parties of record.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [Assistance for the hearing impaired is available through TDD at (202) 927–5721.]

Decided: March 14, 1996.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–6828 Filed 3–20–96; 8:45 am]

BILLING CODE 4915–00–P

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903.

DEPARTMENT OF THE TREASURY

Federal Law Enforcement Training Center

AGENCY: Advisory Committee to the National Center for State, Local, and International Law Enforcement Training.

ACTION: Notice of meeting.

SUMMARY: The agenda for this meeting includes remarks by the Director of the Federal Law Enforcement Training Center and Committee Co-chairs; and reports on Leadership Model, Community Oriented Policing (COP), and the COP Fellowship.

DATES: March 26, 1996.

ADDRESSES: Federal Law Enforcement Training Center, Glynco, Georgia 31524.

FOR FURTHER INFORMATION CONTACT: Hobart M. Henson, National Center for State, Local, and International Law Enforcement Training, Federal Law Enforcement Training Center, Glynco, Georgia 31524.

Dated: March 14, 1996.

Earl L. Housenfluck,

Deputy Office Director.

[FR Doc. 96–6801 Filed 3–20–96; 8:45 am]

BILLING CODE 4810–32–M

UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION

Request for Recommendations

AGENCY: Utah Reclamation Mitigation and Conservation Commission.

ACTION: Notice.

SUMMARY The Utah Reclamation Mitigation and Conservation Commission is requesting comment on their Draft Mitigation and Conservation Five-Year Plan. The Plan will guide the Commission's mitigation and conservation program for impacts associated with the construction of the Central Utah Project and other Federal reclamation projects in Utah.

DATES: The comment period will be open for a period of 30 days from March 15, 1996, through April 15, 1996.

ADDRESSES: Copies of the Draft Mitigation and Conservation Plan are available from the Planning Manager, Utah Reclamation Mitigation and Conservation Commission, 111 East Broadway, Suite 310, Salt Lake City, Utah 84111. Comments on the Draft Plan should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Joan Degiorgio, Telephone (801) 524–3146; Fax (801) 524–3148.

Authority: Pub. L. 102–575, 106 Stat. 4600, 4625, October 30, 1992.

Joan Degiorgio,

Acting Executive Director.

[FR Doc. 96–6754 Filed 3–20–96; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF VETERANS AFFAIRS

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Number: 2900–0040.

Title and Form Number: Request for Postponement of Offsite or Exterior Onsite Improvements, VA Form 26–1847.

Type of Information Collection: Extension of a currently approved collection.

Needs and Uses: The form serves as the lender's and veteran's request for guaranty of home loan for which offsite or exterior onsite improvements are incomplete to permit the veteran's occupancy of the property. Without this information, it would not be possible for loans to be guaranteed in such cases with adequate protection for the veteran and VA, and for veterans to occupy affected properties.

Affected Public: Individuals or households—Business or other for-profit.

Estimated Annual Burden: 2,500 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Generally one-time.

Estimated Number of Respondents: 5,000 respondents.

OMB Control Number: 2900–0047.

Title and Form Number: Financial Statement, VA Form 26–6807.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is completed by respondents (veteran-obligors and prospective assumers) in connection with release of liability and substitution of entitlement cases. The information collection is essential to determinations for release of liability and substitution of entitlement cases.

Affected Public: Individuals or households.

Estimated Annual Burden: 30,000 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: Generally one-time.

Estimated Number of Respondents: 40,000.

OMB Control Number: 2900–0244.

Title and Form Number: Electrical Systems Inspection Report, VA Form 26–8731b.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is used by inspectors to record inspection findings for electrical systems of used manufactured homes proposed as security for guaranteed loans. The information is used by VBA to determine acceptability of units for VA financing.

Affected Public: Business or other for-profit—Individuals or households.

Estimated Annual Burden: 240 hours.

Estimated Average Burden Per Respondent: 2 hours.

Frequency of Response: Generally one-time.

Estimated Number of Respondents: 120.

OMB Control Number: 2900–0253.

Title and Form Number: Nonsupervised Lender's Nomination and Recommendation of Credit Underwriter, VA Form 26–8736a.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is submitted to VBA by a nonsupervised lender with the initial application for authority to close loans on an automatic basis or in connection with nominations of additional or new credit underwriters, subsequent to approval. The information is used by VBA to determine if the lender's nominee is qualified to close VA loans on an automatic basis.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 1,000 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: Generally one-time.

Estimated Number of Respondents: 3,000.

OMB Control Number: 2900–0320.

Title and Form Number: Escrow Agreement for Postponed Exterior Onsite Improvements, VA Form 26–1849.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is a legal agreement between builder/seller, lender, and escrow agent covering escrow of funds for unfinished exterior onsite improvements of newly constructed housing proposed for VA guaranteed financing.

Affected Public: Individuals or households—Business or other for-profit.

Estimated Annual Burden: Because escrow agreements, such as VA Form 26–1849, are common practices in the building and lending industry, only 1 hour is being requested.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Generally one-time.

Estimated Number of Respondents: 32,000.

OMB Control Number: 2900–0355.

Title and Form Number: Verification of Pursuit of Course (Leading to a Standard College Degree), VA Form 22–6553.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is used by schools to certify enrollment information and to report changes in a student's enrollment status. The information is used to determine if VA education benefits are affected.

Affected Public: State, Local or Tribal Government—Not-for-profit institutions.

Estimated Annual Burden: 35,240 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5,286.

OMB Control Number: 2900–0396.

Title and Form Number: Certification of Training, VA Form 22–8929; Notice of Intent to Employ a Veteran, VA Form 22–8930; Employer's Application for Approval of a Job Training Program, VA Form 22–8931; Application for a Certificate of Eligibility, VA Form 22–8932.

Type of Review: Revision of currently approved collection.

Need and Uses: The employer uses VA Form 22–8929 to apply for reimbursement for training a veteran; VA Form 22–8930 to notify VA that the employer is going to hire a veteran; VA Form 22–8931 to request VA approval of a job training program. The veteran uses VA Form 22–8931 to apply for a certification of eligibility for job training.

Affected Public: Business or other for-profit—Individuals or households—State, Local or Tribal Government—Not-for-profit institutions.

Estimated Annual Burden: 26,400 hours.

Estimated Average Burden Per Respondent: 24 minutes (average).

Frequency of Response: On occasion.

Estimated Number of Respondents: 59,400.

OMB Control Number: 2900–0474.

Title and Form Number: Loan Guaranty Funding Fee Transmittal, VA Forms 26–8986 and 26–8986–1.

Type of Review: Extension of a currently approved collection.

Need and Uses: Use of these forms will allow lending institutions to transmit funding fees required for VA-guaranteed home loans to a lockbox depository.

Affected Public: Individuals or households—Business or other for-profit.

Estimated Annual Burden: 58,333 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Generally one-time.

Estimated Number of Respondents: 350,000.

ADDRESSES: Copies of these submissions may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 565–4412.

Comments and recommendations concerning the submissions should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–4650. Do not send requests for benefits to this address.

DATES: Comments on the collections of information should be directed to the OMB Desk Officer on or before April 22, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 565–4412.

Dated: March 8, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–6799 Filed 3–20–96; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Thursday
March 21, 1996

Part II

Department of Housing and Urban Development

24 CFR Parts 290 and 886

Disposition of Multifamily Projects and Sale of HUD-Held Multifamily Mortgages; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 290 and 886

[Docket No. FR–3715–F–02]

RIN 2502–AG30

Office of Assistant Secretary for Housing—Federal Housing Commissioner; Disposition of Multifamily Projects and Sale of HUD-Held Multifamily Mortgages

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements at 24 CFR part 290 the regulatory requirements under the Multifamily Housing Property Disposition Reform Act of 1994 that affect the management and disposition of HUD-owned properties and properties with HUD-held mortgages, and the sale of HUD-held multifamily mortgages. Conforming changes are made to part 886.

EFFECTIVE DATE: April 22, 1996.

FOR FURTHER INFORMATION CONTACT: Barbara D. Hunter, Director, Program Management Division, Office of Multifamily Asset Management and Disposition, Department of Housing and Urban Development, Room 6182, 451 7th Street SW, Washington, DC 20410. Telephone (202) 708–3944; TDD (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in § 290.9 of this rule have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2502–0204. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

I. Statutory and Regulatory Background

On August 17, 1993 (58 FR 43708), the Department published a final rule amending its requirements for the management and disposition of HUD-owned multifamily housing projects. The regulation, at 24 CFR part 290, implemented HUD's statutory authority, contained in section 207 (k) and (l) of the National Housing Act and in section 203 of the Housing and Community Development Amendments of 1978, to handle and dispose of such real property.

Section 203 was amended by section 181 of the Housing and Community Development Act of 1987 (1987 Act), section 1010 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (1988 Act), and section 579 of the National Affordable Housing Act of 1990 (NAHA). A final rule published on August 17, 1993 implemented the NAHA amendments. Generally, the statutory amendments specified the type of assistance to be provided when the Department determines to preserve units as affordable low- and very low-income housing, and included certain projects with HUD-held mortgages within the scope of section 203.

In the Multifamily Housing Property Disposition Reform Act of 1994 (MHPDRA) (Pub. L. 102–233, approved April 11, 1994), section 203 was completely revised. An interim rule amending 24 CFR part 290 to reflect the new statutory amendments was published on March 2, 1995 (60 FR 11844) with a 60 day public comment period. The Department received no comments on the interim rule.

II. Changes Made by the Final Rule—Regulatory Reinvention

Consistent with Executive Order 12866 and President Clinton's memorandum of March 4, 1995 to all Federal Departments and Agencies on regulatory reinvention, HUD has reviewed all its regulations to determine whether certain regulations can be eliminated, streamlined, or consolidated with other regulations. In keeping with the President's mandate to reinvent and reform regulations, the Department is taking advantage of the publication of this final rule to streamline part 290. The entire part has been re-drafted to eliminate text that only repeats the statutory language, or provisions that are only advisory (rather than binding) or non-exclusive. Instead of consisting of nine subparts, A through I, as did the interim rule, this final rule has only two subparts: subpart A—Disposition of Multifamily Projects, and subpart B—Sale of HUD-Held Multifamily Mortgages.

One goal of reinventing regulations is to remove rule text that only repeats statutory language. To achieve this goal, rules will only contain legally binding requirements that are in addition to those contained in a statute. This will streamline regulations, avoid redundancy, and remove the problems that result when a rule that echoes the language of a statute becomes inconsistent with new statutory amendments. The period before a rule is amended to conform to new statutory language is often one of confusion and uncertainty as to which law applies. The final rule promulgated here does not, therefore, repeat any statutory language; it contains only those provisions that clarify the statutory procedures, or provisions that address those areas that give the Secretary discretion to act.

The remaining regulatory text is further pruned to eliminate provisions that are only advisory (rather than binding) or non-exclusive. An example of such a provision is the listing in § 290.42(d)(3) of the interim rule of persons included in the definition of ''displaced person.'' This listing is prefaced by the phrase, ''This includes, but is not limited to:'', which indicates that it only provides examples, and is not exclusive or complete. Such lists of examples are more appropriate for inclusion in guidance materials (such as the appendix which follows this rule) than in rules.

The consolidated statutory and regulatory procedures for the disposition of multifamily properties, which were contained in the interim rule, have been placed in an appendix to this final rule. The final rule will be codified in the Code of Federal Regulations; the appendix will not be codified. However, the appendix is available to the public as a single document which provides a unified overview of the disposition process. The user-friendly features of the interim rule, its tables and question-and-answer format, are retained as features of the appendix.

A number of consolidating and clarifying adjustments are also made to the regulatory language that remains in part 290. The requirements for the timing of any disposition-related notifications (i.e., pre-foreclosure notification to tenants and units of general local government; pre-disposition community and tenant input notification; state and local government right of first refusal notification) are combined into a single provision, at § 290.11, which states that notifications will be made, as appropriate, (1) 60 or more days before HUD forecloses on a project, or (2) before, or not more than 30 days after, HUD acquires a project. By making it clear that notifications that may be made up to 30 days after acquisition may also be made before acquisition, the rule confirms that the notification provisions are meant to complement, rather than impede, the disposition process. For instance, in the case of a negotiated sale to a State or local government (including public

agencies), waiting until after acquisition to provide the statutorily required state and local government right of first refusal notification could delay a disposition for 90 days. Providing this notification earlier in the process allows for a more expeditious disposition.

A correction is made in the table entitled ''Pre-Disposition Notification Requirements,'' which now appears in the appendix. In the interim rule, the timing for providing notice to tenants and the community was listed as 60 days in the table, and 30 days in the rule text. The time period in the table is here conformed to 30 days.

This rule also includes two provisions, at §§ 290.37 and 290.39, added to the Sale of HUD-Held Multifamily Mortgages subpart by an interim rule published on February 6, 1996 (61 FR 4580). These provisions are included in this rule to present the complete part 290 in its current form. However, after considering comments submitted on these provisions, they will be republished separately as a final rule.

As an additional matter, the Department is taking advantage of the publication of this rule to provide notice of section 401 of Pub. L. 104–99 (110 Stat. 26, approved January 26, 1996), which provides that, ''During fiscal year 1996, the Secretary of Housing and Urban Development may manage and dispose of multifamily properties owned by the Secretary, including the provision of the grants from the General Insurance Fund (12 U.S.C. 1735c) for the necessary costs of rehabilitation and other related development costs and multifamily mortgages held by the Secretary without regard to any other provision of law.''

III. Other Matters

Any assistance made available to a purchaser under this rule, whether rental or other financial assistance, will be subject to scrutiny under section 102(d) of the HUD Reform Act, insofar as that statutory provision has been implemented by guidelines issued by the Office of Housing under 24 CFR part 12, subpart D (see, *e.g.*, a Federal Register Notice published April 9, 1991 (56 FR 14436) entitled ''Administrative Guidelines; Limitations on Combining Other Government Assistance with HUD Housing Assistance'').

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW, Washington, DC 20410.

Regulatory Flexibility Act

The Secretary, in accordance with provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. These requirements governing the management and disposition of HUD-owned multifamily housing projects should not affect the ability of small entities, relative to larger entities, to bid for and acquire projects that HUD determines to sell.

Executive Order 12612, Federalism

HUD has determined, in accordance with Executive Order 12612, *Federalism*, that this rule will not have a substantial, direct effect on the States or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government. While the rule would impose terms and conditions on States that acquire projects under this rule, that is clearly the intent of the authorizing legislation, and therefore no further review is necessary or appropriate.

Executive Order 12606, the Family

HUD has determined that this rule will not have a significant impact on family formation, maintenance, and general well-being within the meaning of Executive Order 12606, *The Family*, because it does not affect the eligibility of families for admission into multifamily housing projects that are subject to this rulemaking.

The Catalog of Federal Domestic Assistance Program number and title are 14.156, Lower Income Housing Assistance Program (Section 8).

List of Subjects

24 CFR Part 290

Low and moderate income housing, Mortgage insurance.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, under the authority of 42 U.S.C. 3535(d), for the reasons stated in the preamble, title 24 of the Code of Federal Regulations is amended by adopting the amendments to part 886 of the interim rule published in the Federal Register of March 2, 1995 (60 FR 11844) as final without change, and by revising part 290, to read as follows:

PART 290—DISPOSITION OF MULTIFAMILY PROJECTS AND SALE OF HUD-HELD MULTIFAMILY MORTGAGES

Subpart A—Disposition of Multifamily Projects

Sec.
290.1 Applicability.
290.3 Definitions.
290.7 Occupancy requirements.
290.9 Setting rental rates.
290.11 Notification requirements.
290.13 Negotiated sales.
290.15 Disposition plan.
290.17 Displacement of tenants and relocation assistance.
290.19 Restrictions concerning nondiscrimination against Section 8 certificate holders and voucher holders.
290.21 Computing annual number of units eligible for substitution of tenant-based assistance or alternative uses.
290.23 Rebuilding.
290.25 Determination not to preserve a project or a part of a project.

Subpart B—Sale of HUD-Held Multifamily Mortgages

290.30 General.
290.31 Sale of current mortgages securing subsidized projects.
290.33 Sale of delinquent mortgages securing subsidized projects.
290.35 Sale of HUD-held mortgages securing unsubsidized projects.
290.37 Requirements for continuing federal rental subsidy contracts.
290.39 Nondiscrimination in admitting certificate and voucher holders.

Authority: 12 U.S.C. 1701z–11, 1701z–12, 1713, 1715b, 1715z–1b; 42 U.S.C. 3535(d).

Subpart A—Disposition of Multifamily Projects

§ 290.1 Applicability.

The requirements of this part supplement the requirements of 12 U.S.C. 1701z–11 for the management and disposition of multifamily housing projects and the sale of HUD-held multifamily mortgages. The goals and objectives of this part are the same as the goals and objectives of 12 U.S.C. 1701z–11, which shall be referred to in this part as ''the Statute.''

§ 290.3 Definitions.

The terms *Department* and *URA* are defined in 24 CFR part 5. The following definitions apply to this part:

Cooperative means a nonprofit, limited equity, or consumer cooperative as defined under 24 CFR part 213. It

may include mutual housing associations.

HUD-owned project means a multifamily project that has been acquired by HUD.

Market area means the area from which a multifamily housing project may reasonably be expected to draw a substantial number of its tenants, as determined by HUD, taking into consideration the knowledge of the HUD office with jurisdiction over the project of the local real estate market and HUD's project underwriting experience. Submarkets may be used in large, complex metropolitan areas.

Multifamily housing project means a multifamily project that is or was insured under sections 207, 213, 220, 221(d)(3), 221(d)(4), 223(f), 231, 236, or 608 of the National Housing Act (12 U.S.C. 1713, 1715e, 1715k, 1715l, 1715n, 1715v, 1715z–1, or 1742–1746); or is or was subject to a loan under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q); or was a Real Estate Owned (REO) multifamily project transferred by the Government National Mortgage Association to the Department. Multifamily housing project does not include projects consisting of one to eleven units insured under section 220(d)(3)(A) of the National Housing Act (12 U.S.C. 1715l); or mobile home parks under section 207(m) of that Act (12 U.S.C. 1713); or vacant land; or property covered by a homeownership program approved under the Homeownership and Opportunity for People Everywhere (''HOPE'') program.

Multifamily project means a project consisting of five or more units that has or had a mortgage (even if subordinate to other mortgages) insured under the National Housing Act or is or was subject to a loan under section 202 of the Housing Act of 1959, or a hospital, intermediate care facility, nursing home, group practice facility, or board and care facility that has or had a mortgage insured, or is or was subject to a loan under, these authorities. Multifamily project does not include projects consisting of one to eleven units insured under section 220(d)(3)(A) of the National Housing Act (12 U.S.C. 1715k), which are classified as single family homes.

Nonprofit organization means a corporation or association organized for purposes other than making a profit or gain for itself. Stockholders or trustees do not share in profits or losses. Profits are used to accomplish the charitable, humanitarian, or educational purposes of the corporation.

Preexisting tenant means a family that resides in a unit in a multifamily housing project immediately before the project is acquired under this part by a purchaser other than the Department.

Subsidized project means a multifamily housing project that is receiving, or immediately before its mortgage was foreclosed by HUD or the project was acquired by HUD, pursuant to this regulation, was receiving any of the following types of assistance:

(1) Below market interest rate mortgage insurance under the proviso of section 221(d)(5) of the National Housing Act (12 U.S.C. 1715l) (hereinafter, a BMIR project);

(2) Interest reduction payments made in connection with mortgages insured under section 236 of the National Housing Act (hereinafter, a 236 project);

(3) Direct loans made under section 202 of the Housing Act of 1959 (hereinafter, a 202 project);

(4) Assistance, to more than 50 percent of the units in the project, in the form of:

(i) Rent supplement payments under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) (hereinafter, Rent Supp);

(ii) Additional assistance payments under section 236(f)(2) of the National Housing Act (hereinafter, RAP);

(iii) Housing assistance payments under section 23 of the United States Housing Act of 1937 (42 U.S.C. 1437 *note*) (as in effect before January 1, 1975) (hereinafter, Sec. 23); or

(iv) Housing assistance payments under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) (excluding payments of tenant-based Section 8 assistance) (hereinafter, project-based Section 8 assistance).

Sufficient habitable, affordable, rental housing is available means that the HUD office with jurisdiction determines that there is an adequate supply of habitable, affordable housing for low- and very low-income families available in the market area. Submarkets, consisting of portions of units of general local government, may be used in large, complex metropolitan areas. Local housing markets having an adequate supply of standard-quality rental housing would include housing markets in which the supply of rental housing available and in production is adequate to meet the anticipated demand (*e.g.*, the housing market is balanced), as well as those in which there is an excess supply of rental housing (*e.g.*, the housing market is soft). Rental markets that do not have an adequate supply (*e.g.*, tight markets) are characterized by low rental vacancy rates, low levels of production and turnover of rental housing, and, usually, by high levels of rent inflation. HUD will make the determination of whether sufficient habitable, affordable, rental housing is available using established market analysis techniques, and will consider information that demonstrates:

(1) The rental housing vacancy rate is at a low level relative to the rate required for a balanced market, typically a four percent vacancy rate; except that a rate lower than four percent may be considered in unusual circumstances if it can be demonstrated that there is an adequate supply of affordable housing for low-income families;

(2) The number of rental housing units being produced on an annual basis is not large enough to satisfy demand arising from the increase in households, or, in markets where there is little or no growth, evidence that the number of additional rental units being supplied is not sufficient to meet the demand arising from net losses to the available inventory and the inadequate supply of rental housing has inhibited growth;

(3) The shortage of housing is resulting in rent increases that exceed normal increases commensurate with the costs of operating rental housing;

(4) A significant number, or proportion, of the households holding Section 8 certificates or rental vouchers are unable to find adequate housing because of the shortage of rental housing, including PHA data showing a lower than average percentage of units under lease and a longer than average time required to find units.

Unsubsidized project means a multifamily housing project that is not a subsidized project.

Useful life means, generally, twenty years, but it may be more or less, as determined by the Department.

§ 290.7 Occupancy requirements.

(a) *Multifamily housing project that is HUD-owned or for which HUD is mortgagee-in-possession.* Occupancy in a multifamily housing project that is HUD-owned or for which HUD is mortgagee-in-possession shall be available on a basis that is comparable to the occupancy requirements that applied to the project immediately before HUD acquired the project or became mortgagee-in-possession, except that preference shall be given to tenants of other HUD-owned multifamily housing projects who are eligible for assistance in accordance with the displacement and relocation provisions at § 290.17.

(b) *Evictions.* Eviction from a HUD-owned multifamily housing project is governed by 24 CFR part 247, subpart B.

(c) *Threat to health and safety.* Whenever HUD determines that there is an immediate threat to the health and

safety of the tenants, HUD may require the tenants to vacate the premises and shall provide temporary relocation benefits as provided in § 290.17 to tenants required to vacate the premises.

§ 290.9 Setting rental rates.

Because of the subsidies involved in making multifamily housing projects affordable, the setting of rents involves two steps: first, establishing the rent on a unit that will be paid to the owner, and second, determining the rent that the tenant pays (with the difference made up by a subsidy), using a number of procedures to obtain income verification and notify tenants of changes in rent. These procedures for a property owned by HUD or where HUD is mortgagee-in-possession are explained below.

(a) *Setting unit rents.* Except as modified by this section, for a property where HUD is mortgagee-in-possession (MIP), HUD will set unit rents in accordance with the rent setting requirements of the project's mortgage insurance or direct loan program; or for a property owned by HUD, rents will be set in accordance with the rent setting requirements of the project's mortgage insurance or direct loan program in effect immediately before HUD became the owner of the project.

(b) *Setting rents payable by tenants.* (1) *Tenant rent.* The rent the tenant pays will be based on the income certification and the rent payment requirements of the project's mortgage insurance or direct loan program in effect while HUD is MIP or immediately before HUD became the owner of the project, as affected by any of the factors in paragraphs (b)(2) through (b)(4) of this section. However, if a tenant does not certify income as required by this section, the tenant must pay the unit rent as determined under the rent setting requirements in paragraph (a) of this section.

(2) *Utility allowance.* For a tenant whose rent is based on a percentage of adjusted income (except for rental voucher or rental certificate holders), if the cost of utilities (except telephone) and other housing services for the unit is the responsibility of the tenant to pay directly to the provider of the utility or service, HUD will deduct from the rent to be paid by the tenant to HUD a utility allowance, which is an amount equal to HUD's estimate of the monthly costs of a reasonable consumption of the utilities and other services for the unit for an energy-conservative household of modest circumstances consistent with the requirement of a safe, sanitary, and healthful living environment. If the utility allowance exceeds the percentage of the tenant's adjusted income payable as rent, HUD will pay the difference between the amount payable as rent and the utility allowance to the tenant or, with the consent of the tenant and the utility company, either jointly to the tenant and the utility company or directly to the utility company.

(3) *Rent adjustments for project viability.* For a HUD-owned project, HUD may adjust the rent provided for in paragraphs (b)(1) or (b)(2) of this section if necessary or desirable to maintain the existing economic mix in the project, prevent undesirable turnover, or increase occupancy.

(4) *Tenants who are rental voucher or rental certificate holders.* Tenants assisted with rental vouchers or certificates certify their income to the public housing agency (PHA) administering the assistance, and pay rent pursuant to the policies and procedures governing such assistance.

(c) *Income verification and rent notification procedures.* (1) *Income certification by tenants.* (i) *In subsidized projects.* (A) For families residing in subsidized projects, when HUD becomes MIP or owner, HUD will request an income certification from each family as soon as practicable after HUD initially assumes management, unless the family's income has been examined by the owner or by HUD not more than four months before HUD's assumption of management.

(B) For each family applying for admission to subsidized projects, HUD will request an income certification to determine the family's eligibility for a subsidized rent, and (if the rent is based on a percentage of adjusted income) the family's subsidized rent, in accordance with part 813 of this title.

(ii) *In unsubsidized projects.* (A) For tenants in occupancy when HUD becomes mortgagee-in-possession or owner of an unsubsidized project, HUD may request an income certification from families who are not paying a subsidized rent.

(B) For families applying for admission to such projects, HUD will request sufficient information for income verification to determine the family's ability to pay the unit rent.

(2) *Notice of increases in the amount of rent payable.* Whenever HUD proposes an increase in rents in a HUD-owned multifamily project or a project where HUD is mortgagee-in-possession, HUD will provide tenants 30 days notice of the proposed changes and an opportunity to review and comment on the new rent and supporting documentation. After HUD considers the tenants' comments and has made a decision with respect to its proposed rent change, HUD shall notify the tenants of its decision, with the reasons for the decision. A tenant in occupancy before the effective date of any revised rental rate must be given 30 days notice of the revised rate, and any change in the tenant's rent is subject to the terms of an existing lease. Notices to each tenant must be personally delivered or sent by first class mail. General notices of rent increases to all tenants must be posted in the project office and in appropriate conspicuous and accessible locations around the project.

(3) *Disclosure and verification of Social Security numbers.* Any certifications or reexaminations of the income of tenants or prospective tenants in connection with tenancy under this section are subject to the requirements for the disclosure and verification of Social Security Numbers, as provided by part 200, subpart T, of this title.

(4) *Signing of consent forms for income verification.* Any certifications or reexaminations of the income of tenants or prospective tenants in connection with tenancy under this section are subject to the requirements for the signing and submitting of consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by part 200, subpart V, of this title.

(Approved by the Office of Management and Budget under control number 2502–0204.)

§ 290.11 Notification requirements.

(a) *In general.* HUD may combine two or more of the required notifications, as appropriate, to simplify the disposition process.

(b) *Timing of notifications.* Disposition-related notifications (i.e., pre-foreclosure notification to tenants and units of general local government; pre-disposition community and tenant input notification; state and local government right of first refusal notification) will be made, as appropriate:

(1) 60 or more days before HUD forecloses on a project; or

(2) Before, or not more than 30 days after, HUD acquires a project.

(c) *Methods of notification.* (1) *To tenants.* Pre-disposition notification will be delivered to each unit in the project, or sent to each unit by first class mail. Where HUD is mortgagee-in-possession or owner of a project, the notice will also be posted in the project office and in appropriate conspicuous and accessible locations around the project.

(2) *To units of general local government.* Pre-disposition notification to a unit of general local government

will be sent to the chief executive officer of the unit of general local government by first class mail. For purposes of receiving or sending any notices or information under this part, the unit of general local government is its chief executive officer, or the person designated by the chief executive officer to receive or send the notice or information.

(3) *To the community or any other party.* HUD will consult with tenants and their organizations, officials of units of general local government, and other entities as HUD determines to be appropriate, to identify community recipients of any required notification. Any notice required to be made to any party other than a tenant or a unit of general local government will be sent by first class mail.

(d) *Content of notifications.* Notifications will, as appropriate, identify the project acquired or to be foreclosed by HUD; provide the general terms and conditions concerning the sale, future use, and operation of the project as proposed by HUD; indicate the time by which any offers must be made or any comments must be submitted; and state that the full disposition recommendation and analysis and other supporting information will be available for inspection and copying at the HUD Field Office.

§ 290.13 Negotiated sales.

When HUD conducts a negotiated sale involving the disposition of a project to a person or entity without a public offering, the following provisions apply:

(a) HUD may negotiate the sale of any project to an agency of the federal, State, or local government.

(b) When HUD determines that a purchaser can demonstrate the capacity to own and operate a project in accordance with standards set by HUD, and/or a competitive offering will not generate offers of equal merit from qualified purchasers, HUD may approve a negotiated sale of a subsidized project to:

(1) A resident organization wishing to convert the project to a nonprofit or limited equity cooperative;

(2) A cooperative (*e.g.*, nonprofit limited equity, consumer cooperative, mutual housing organization) with demonstrated experience in the operation of nonprofit (and preferably low-income) housing;

(3) A nonprofit entity that will continue to operate the project as low-income housing and whose governing board is composed of project residents;

(4) A State or local governmental entity with the demonstrated capacity to acquire, manage, and maintain the project as housing available to and affordable by low-income residents;

(5) A State or local governmental or nonprofit entity with the demonstrated capacity to acquire, manage, and maintain the project as a shelter for the homeless or other public purpose, generally when the project is vacant or has minimal occupancy and is not needed in the area for continued use as rental housing for the elderly or families; or

(6) Other nonprofit organizations.

§ 290.15 Disposition plan.

(a) *In general.* Before disposing of a HUD-owned multifamily housing project, HUD will develop an initial and a final disposition plan for the project that specifies the minimum terms and conditions for the disposition of the project, the sales price that is acceptable to HUD, and the assistance that HUD plans to make available to a prospective purchaser.

(b) *Environmental requirements.* HUD will perform, and include in the final disposition plan, the environmental reviews required by 24 CFR part 50.

§ 290.17 Displacement of tenants and relocation assistance.

(a) *Scope of section.* This section applies to all HUD-owned multifamily housing projects and all multifamily housing projects subject to HUD-held mortgages. When HUD is not the mortgagee-in-possession or owner, the owner of the project shall comply with this section, if HUD has authorized the demolition of, repairs to, or conversion of the use of the multifamily housing project.

(b) *Minimizing displacement.* Consistent with the other goals and objectives of this part, all reasonable steps shall be taken to minimize the displacement of persons (families, individuals, businesses, and nonprofit organizations) from a project covered by this part. If displacement or temporary relocation will occur in connection with the disposition of a project, HUD may require the purchaser of the project to provide assistance in accordance with this section.

(c) *Relocation assistance at non-URA levels.* Whenever the displacement of a residential tenant (family or individual) occurs in connection with the management or disposition of a multifamily housing project, but is not subject to paragraph (d) of this section (*e.g.*, occurs as a direct result of HUD repair or demolition of all or a part of a HUD-owned multifamily housing project or as a direct result of the foreclosure of a HUD-held mortgage on a multifamily housing project or sale of a HUD-owned project without federal financial assistance), the displaced tenant shall be eligible for the following relocation assistance:

(1) Advance written notice of the expected displacement shall be provided at least 60 days before displacement, describe the assistance and the procedures for obtaining the assistance, and contain the name, address and phone number of an official responsible for providing the assistance;

(2) Other advisory services, as appropriate, including counseling, referrals to suitable (and where appropriate, accessible), decent, safe, and sanitary replacement housing, and fair housing-related advisory services;

(3) Payment for actual reasonable moving expenses, as determined by HUD; and

(4) Such other federal, State or local assistance as may be available.

(d) *Relocation assistance at URA levels.* (1) *General.* The requirements of this paragraph apply to any displacement that results whenever assistance under 24 CFR part 886, subpart C, (or other federal financial assistance, as defined in 49 CFR 24.2(j)) is provided in connection with the purchase, demolition, or rehabilitation of a multifamily property by a third party. A displaced person (defined in paragraph (d)(3) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the URA, implementing regulations at 49 CFR part 24, and this section.

(2) *Definition of ''initiation of negotiations''.* Under the URA, for purposes of determining the method for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, the term ''initiation of negotiations'' means the transfer of title to the purchaser.

(3) *Definition of displaced person.* The term ''displaced person'' means any person (family, individual, business, or nonprofit organization) that moves from the real property, or moves personal property from the real property, permanently, as a direct result of acquisition, rehabilitation or demolition for a federally assisted project. However, a person does not qualify as a ''displaced person'' if:

(i) The person is excluded under 49 CFR 24.2(g)(2);

(ii) The person has been evicted for a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of

applicable federal, State, or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(iii) The person moves into the property after transfer of title to the purchaser; or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for an assisted project.

(e) *Temporary relocation (URA and non-URA relocation assistance).* Residential tenants, who will not be required to move permanently, but who must relocate temporarily (*e.g.*, to permit property repairs), shall be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing and any increase in monthly rent or utility costs. The party responsible for this requirement may, at its option, perform the services involved in temporarily relocating the tenants or pay for such services directly; and

(2) Appropriate advisory services, including reasonable advance written notice of the date and approximate duration of the temporary relocation; the suitable (and where appropriate, accessible), decent, safe, and sanitary housing to be made available for the temporary period; the terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the repairs; and the right to financial assistance provided under paragraph (e)(1) of this section.

(f) *Appeals.* If a person disagrees with the purchaser's determination concerning the person's eligibility for relocation assistance or the amount of the assistance for which the person is eligible, the person may file a written appeal of that determination with the owner or purchaser. A person who is dissatisfied with the purchaser's determination on his or her appeal may submit a written request for review of that decision to the HUD Field Office responsible for administering the URA in the area.

§ 290.19 Restrictions concerning nondiscrimination against Section 8 certificate holders and voucher holders.

The purchaser of any multifamily housing project shall not refuse unreasonably to lease a dwelling unit offered for rent, offer to sell cooperative stock, or otherwise discriminate in the terms of tenancy or cooperative purchase and sale because any tenant or purchaser is the holder of a Certificate of Family Participation or a Voucher under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), or any successor legislation. This provision is limited in its application, for tenants or applicants with Section 8 Certificates or their equivalent (other than Vouchers), to those units which rent for an amount not greater than the Section 8 Fair Market Rent, as determined by HUD. The purchaser's agreement to this condition must be contained in any contract of sale and also may be contained in any regulatory agreement, use agreement, or deed entered into in connection with the disposition.

§ 290.21 Computing annual number of units eligible for substitution of tenant-based assistance or alternative uses.

(a) *Substitution of tenant-based Section 8 assistance to low-income families instead of project-based assistance to units.* The number of units eligible, as permitted by the Statute, for this form of substitution within the 10 percent limit will be estimated at the beginning of each fiscal year, taking into consideration the aggregate number of subsidized project units disposed of by HUD in the immediately preceding fiscal year and the disposition activity planned for the current fiscal year.

(b) *Alternate uses.* The number of units eligible for alternate uses in any fiscal year, as permitted by the Statute, will be determined at the beginning of the fiscal year as the applicable percentages (*i.e.*, either 10 percent or 5 percent) of the estimated total number of units to be disposed of in the fiscal year, taking into consideration the total number of units in multifamily housing projects disposed of by the Department in the immediately preceding fiscal year, and the extent of the disposition activity planned in the current fiscal year.

§ 290.23 Rebuilding.

HUD may provide project-based assistance to support the rebuilding of a HUD-owned multifamily housing project only. The required determination that rebuilding the project would be less expensive than substantial rehabilitation means that the costs to HUD for rebuilding are such that the monthly debt service needed to amortize the cost of relocating tenants, demolition, site preparation, rebuilding, operating expenses, and a reasonable return to the purchaser cannot be provided with rents that are within 120 percent of the most recently published Section 8 Fair Market Rents for Existing Housing (24 CFR part 888, subpart A), and would be less expensive than rehabilitation.

§ 290.25 Determination not to preserve a project or a part of a project.

HUD may determine to demolish, or otherwise dispose of, a HUD-owned multifamily housing project, or any portion of such a project, or to foreclose a HUD-held mortgage on a multifamily housing project, without ensuring its continued availability as affordable rental or cooperative housing for low- and very low-income families under appropriate circumstances which may include one or more those listed in paragraphs (a) through (g) of this section. If HUD decides not to preserve an occupied multifamily housing project at a foreclosure sale or sale of a HUD-owned project, tenants must be provided relocation assistance as described in § 290.17.

(a) The costs to HUD of rehabilitation are such that the monthly debt service needed to amortize the cost of rehabilitation, operating expenses, and a reasonable return to the purchaser cannot be provided with rents that are, for subsidized and formerly subsidized projects, within 120 percent of the most recently published Section 8 Fair Market Rents for Existing Housing (24 CFR part 888, subpart A) or, for unsubsidized and formerly unsubsidized projects, within rents obtainable in the market.

(b) Construction is substantially incomplete.

(c) Preservation is not feasible because of environmental factors that cannot be mitigated by HUD or the purchaser. For example, when the project is located on a site that cannot be made to comply with the Section 8 Site and Neighborhood standards in 24 CFR 886.307(k) because of factors that adversely affect the health, safety and general welfare of residents such as air pollution; smoke; mud slides; fire or explosion hazards. Preservation may also be infeasible because of significantly deteriorated surrounding neighborhood conditions with inadequate police or fire protection; high crime rates; drug infestation; or lack of public community services needed to support a safe and healthy living environment for residents.

(d) HUD determines the project is unfit for rehabilitation.

(e) Rehabilitation would cost more than constructing comparable new housing.

(f) A reduction in the number of units in the project will enhance long-term project viability, for example, demolition of a building to provide

space for a playground, open space, or combining one-bedroom units to create larger units for families.

(g) Continued preservation of the project as rental or cooperative housing is not compatible with State or local land use plans for the area in which the project is located.

Subpart B—Sale of HUD-Held Multifamily Mortgages

§ 290.30 General.

(a) Except as otherwise provided in § 290.32(a)(2), HUD will sell HUD-held multifamily mortgages on a competitive basis. HUD retains full discretion to offer any qualifying mortgage for sale and to withhold or withdraw any offered mortgage from sale. However, when a qualifying mortgage is offered for sale, the procedures set out in this subpart will govern the sale.

(b) References in subpart B of this part to mortgages securing subsidized projects include HUD-held purchase money mortgages on subsidized projects.

§ 290.31 Sale of current mortgages securing subsidized projects.

HUD will sell current mortgages securing subsidized projects, as follows:

(a) *Current mortgages with FHA mortgage insurance* will be sold either:

(1) On a competitive basis to FHA-approved mortgagees; or

(2) On a negotiated basis, to State or local governments, or to a group of investors that includes an agency of a State or local government if, in addition to meeting the requirements of the Statute, the sales price is the best price that HUD can obtain from an agency of a State or local government while maintaining occupancy for the tenant group originally intended to be served by the subsidized housing program.

(b) *Current mortgages without FHA mortgage insurance* will be sold if HUD can offer protections equivalent to those listed for an insured sale in paragraph (a) of this section.

§ 290.33 Sale of delinquent mortgages securing subsidized projects.

Delinquent mortgages securing subsidized projects will be sold only if, as part of the sales transaction:

(a) The mortgages are restructured; and

(b) Either FHA mortgage insurance or equivalent protections are provided.

§ 290.35 Sale of HUD-held mortgages securing unsubsidized projects.

HUD's policy for selling HUD-held mortgages securing unsubsidized projects is as follows:

(a) *Current mortgages* may be sold with or without FHA mortgage insurance.

(b) *Delinquent mortgages* may be sold without FHA mortgage insurance. However, delinquent mortgages will not be sold if:

(1) HUD believes that foreclosure is unavoidable; and

(2) The project securing the mortgage is occupied by very low-income tenants who are not receiving housing assistance and would be likely to pay rent in excess of 30 percent of their adjusted monthly income if HUD sold the mortgage.

§ 290.37 Requirements for continuing federal rental subsidy contracts.

For any mortgage that, at the time HUD offers the mortgage for sale without FHA mortgage insurance, is delinquent and secures a subsidized project or unsubsidized project that receives any of the forms of assistance enumerated in paragraphs (4)(i) to (4)(iv) of the ''subsidized project'' definition in § 290.3:

(a) The mortgage purchaser and its successors and assigns shall require the mortgagor to record a covenant running with the land as part of any loan restructuring or of a final compromise of the mortgage debt and shall include a covenant in any foreclosure deed executed in connection with the mortgage. The covenant shall continue in effect until the last federal project-based rental assistance contract expires by its own terms. The covenant shall provide that, except where otherwise approved by HUD, a project purchaser shall agree to assume the obligations of any outstanding:

(1) Project-based federal rental subsidy contract; and

(2) Tenant-based Section 8 housing assistance payments contract with a public housing agency and the related lease.

(b) In the event of foreclosure of the mortgage sold by HUD, the mortgage purchaser and its successors and assigns shall not foreclose in a manner that interferes with any lease related to federal project-based assistance or any lease related to tenant-based, Section 8 housing assistance payments.

§ 290.39 Nondiscrimination in admitting certificate and voucher holders.

(a) *Nondiscrimination requirement.* For any mortgage described in paragraphs (c) or (d) of this section that HUD sells without FHA mortgage insurance, the project owner shall not unreasonably refuse to lease a dwelling unit offered for rent, offer to sell cooperative stock, or otherwise discriminate in the terms of tenancy or cooperative purchase and sale because any tenant or purchaser is a certificate or voucher holder under 24 CFR part 982.

(b) *Inapplicability to current mortgages securing unsubsidized projects that receive no project based-assistance.* The nondiscrimination requirements of this section do not apply to any mortgage that is current under the terms of the mortgage at the time HUD offers it for sale, if the mortgage secures an unsubsidized project that does not receive any of the forms of project-based assistance enumerated in paragraphs (4)(i) to (4)(iv) of the ''subsidized project'' definition in § 290.3.

(c) *Applicability to mortgages securing unsubsidized projects receiving project-based assistance (partially-assisted projects) or securing subsidized projects.* (1) The nondiscrimination requirement in paragraph (a) of this section applies to the project owner upon the sale of a mortgage without FHA mortgage insurance if, at the time HUD offers it for sale, the mortgage secures:

(i) An unsubsidized project that receives any of the forms of assistance enumerated in paragraphs (4)(i) to (4)(iv) of the ''subsidized project'' definition in § 290.5; or

(ii) A subsidized project, as defined in § 290.3.

(2) This requirement shall continue in effect until the mortgage is paid in full, including by a mortgage prepayment, except as provided in paragraph (d) of this section.

(2) A subsidized project, as defined in § 290.3.

This requirement shall continue in effect until the mortgage is paid in full, including by a mortgage prepayment, except as provided in paragraph (d) of this section.

(d) *Covenant requirement for all delinquent mortgages sold without FHA mortgage insurance.* This paragraph (d) applies to the sale of any mortgage that is delinquent at the time HUD offers it for sale without FHA mortgage insurance, without regard to the subsidy status of the project. The mortgage purchaser and its successors and assigns shall require the mortgagor to record a covenant running with the land as part of any loan restructuring or final compromise of the mortgage debt and shall include a covenant in any foreclosure deed executed in connection with the mortgage. The covenant shall set forth the nondiscrimination requirement in paragraph (a) of this section. The covenant shall continue in

effect until a date that is the same as the maturity date of the mortgage sold by HUD.

Dated: March 7, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[Note: The following guide to part 290 will not be codified in title 24 of the Code of Federal Regulations.]

GUIDE

Disposition of Multifamily Projects and Sale of HUD-Held Multifamily Mortgages—Guide

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General Provisions

1. What subjects does this guide cover?

This guide sets out, in a single document, the combined statutory (section 101 of the Multifamily Housing Property Disposition Reform Act of 1994, hereinafter, ''the Statute,'' codified at 12 U.S.C. 1701z–11) and regulatory (24 CFR part 290) requirements for the management and disposition of multifamily projects. Except as provided in paragraph (b) of this section, the requirements described in this guide apply to the sale of multifamily projects which are or were, before being acquired by the Department, assisted or had a mortgage insured under the National Housing Act, or which were subject to a loan or a capital advance under Section 202 of the Housing Act of 1959.

(b) The requirements described in this guide do not apply to multifamily projects being foreclosed by HUD for which the decision to foreclose has been made before March 2, 1995, the effective date of the interim rule which implemented the Multifamily Housing Property Disposition Reform Act of 1994 at 24 CFR part 290, nor to HUD-owned projects where the initial disposition program has been approved before March 2, 1995. For such projects, the procedures in the regulations at 24 CFR 290 in effect immediately prior to March 2, 1995 apply, unless HUD determines, on a case-by-case basis, to apply the new requirements.

2. What are HUD's management and disposition goals?

(a) HUD's goals are to carry out the management and disposition of HUD-owned multifamily projects and multifamily projects subject to HUD-held mortgages in a manner that:

(1) Is consistent with the National Housing Act, section 203 of the Housing and Community Development Amendments of 1978, and other relevant statutes;

(2) Will protect the financial interests of the Federal Government; and

(3) Will, in the least costly fashion among reasonable available alternatives, address the goals of:

(i) Preserving certain housing so that it can remain available to and affordable by low-income persons;

(ii) Preserving and revitalizing residential neighborhoods;

(iii) Maintaining the existing housing stock in a decent, safe, and sanitary condition;

(iv) Minimizing the involuntary displacement of tenants;

(v) Maintaining housing for the purpose of providing rental housing, cooperative housing, and homeownership opportunities for low-income persons;

(vi) Minimizing the need to demolish multifamily housing projects;

(vii) Adhering to fair housing requirements; and

(viii) Disposing of such projects in a manner consistent with local housing market conditions.

(b) *Competing goals.* In determining the manner in which a project is to be managed and disposed of, HUD may balance competing goals relating to individual projects in a manner that will further the purposes of the Statute.

3. What definitions apply in this guide?

The following definitions apply in this guide:

Affordable means, with respect to a unit of a multifamily housing project:

(1) For a unit occupied by a very-low income family, the unit rent does not exceed 30 percent of 50 percent of the area median income (not the income of the family), as determined by the Department, with adjustments for smaller and larger families; or

(2) For a unit occupied by a low-income family other than a very low-income family, the unit rent does not exceed 30 percent of 80 percent of the area median income (not the income of the family), as determined by the Department, with adjustments for smaller and larger families; or

(3) The unit, or the family residing in the unit, is receiving assistance under Section 8 of the United States Housing Act of 1937.

Cooperative means a nonprofit, limited equity, or consumer cooperative as defined under 24 CFR part 213. It may include mutual housing associations.

Department means the United States Department of Housing and Urban Development, or HUD.

HUD-owned project means a multifamily project that has been acquired by HUD.

Low-income family means a low-income family as defined at 24 CFR part 813.

Market area means the area from which a multifamily housing project may reasonably be expected to draw a substantial number of its tenants, as determined by HUD, taking into consideration the knowledge of the HUD office with jurisdiction over the project of the local real estate market and HUD's project underwriting experience. Submarkets may be used in large, complex metropolitan areas.

Multifamily housing project means a multifamily project that is or was insured under sections 207, 213, 220, 221(d)(3), 221(d)(4), 223(f), 231, 236, or 608 of the National Housing Act; or is or was subject to a loan under section 202 of the Housing Act of 1959; or was a Real Estate Owned (REO) multifamily project transferred by the Government National Mortgage Association to the Department. Multifamily housing project does not include projects consisting of one to eleven units insured under section 220(d)(3)(A) of the National Housing Act; or mobile home parks under section 207(m) of that Act; or vacant land; or property covered by a homeownership program approved under the Homeownership and Opportunity for People Everywhere (''HOPE'') program.

Multifamily project means a project consisting of five or more units that has or had a mortgage (even if subordinate to other mortgages) insured under the National Housing Act or is or was subject to a loan under section 202 of the Housing Act of 1959, or a hospital, intermediate care facility, nursing home, group practice facility, or board and care facility that has or had a mortgage insured, or is or was subject to a loan under, these authorities. Multifamily project does not include projects consisting of one to eleven units insured under section 220(d)(3)(A) of the National Housing Act, which are classified as single family homes.

Nonprofit organization means a corporation or association organized for purposes other than making a profit or gain for itself. Stockholders or trustees do not share in profits or losses. Profits are used to accomplish the charitable, humanitarian, or educational purposes of the corporation.

Preexisting tenant means a family that resides in a unit in a multifamily housing project immediately before the project is acquired under this part by a purchaser other than the Department.

Project-based assistance means assistance that is attached to a structure.

Subsidized project means a multifamily housing project that is receiving, or immediately before its mortgage was foreclosed by HUD or the project was acquired by HUD, pursuant to the Statute, was receiving any of the following types of assistance:

(1) Below market interest rate mortgage insurance under the proviso of section 221(d)(5) of the National Housing Act (hereinafter, a BMIR project);

(2) Interest reduction payments made in connection with mortgages insured under section 236 of the National Housing Act (hereinafter, a 236 project);

(3) Direct loans made under section 202 of the Housing Act of 1959 (hereinafter, a 202 project);

(4) Assistance, to more than 50 percent of the units in the project, in the form of:

(i) Rent supplement payments under section 101 of the Housing and Urban Development Act of 1965 (hereinafter, Rent Supp);

(ii) Additional assistance payments under section 236(f)(2) of the National Housing Act (hereinafter, RAP);

(iii) Housing assistance payments under section 23 of the United States Housing Act of 1937 (as in effect before January 1, 1975) (hereinafter, Sec. 23); or

(iv) Housing assistance payments under Section 8 of the United States Housing Act of 1937 (excluding payments of tenant-based Section 8 assistance) (hereinafter, project-based Section 8 assistance).

Sufficient habitable, affordable, rental housing is available means that the HUD office with jurisdiction determines that there is an adequate supply of habitable, affordable housing for low- and very low-income families available in the market area. Submarkets, consisting of portions of units of general local government, may be used in large, complex metropolitan areas. Local housing markets having an adequate supply of standard-quality rental housing would include housing markets in which the supply of rental housing available and in production is adequate to meet the anticipated demand (*e.g.*, the housing market is balanced), as well as those in which there is an excess supply of rental housing (*e.g.*, the housing market is soft). Rental markets that do not have an adequate supply (*e.g.*, tight markets) are characterized by low rental vacancy rates, low levels of production and turnover of rental housing, and, usually, by high levels of rent inflation. HUD will make the determination of whether sufficient habitable, affordable, rental housing is available using established market analysis techniques, and will consider information that demonstrates:

(1) The rental housing vacancy rate is at a low level relative to the rate required for a balanced market, typically a four percent vacancy rate; except that a rate lower than four percent may be considered in unusual circumstances if it can be demonstrated that there is an adequate supply of affordable housing for low-income families;

(2) The number of rental housing units being produced on an annual basis is not large enough to satisfy demand arising from the increase in households, or, in markets where there is little or no growth, evidence that the number of additional rental units being supplied is not sufficient to meet the demand arising from net losses to the available inventory and the inadequate supply of rental housing has inhibited growth;

(3) The shortage of housing is resulting in rent increases that exceed normal increases commensurate with the costs of operating rental housing;

(4) A significant number, or proportion, of the households holding Section 8 certificates or rental vouchers are unable to find adequate housing because of the shortage of rental housing, including PHA data showing a lower than average percentage of units under lease and a longer than average time required to find units.

Tenant-based assistance means rental assistance that is not attached to a structure.

Unit of general local government means a city, town, township, county, parish, village, or other general purpose political subdivision of a State.

Unsubsidized project means a multifamily housing project that is not a subsidized project.

URA means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601–4655).

Useful life means, generally, twenty years, but it may be more or less, as determined by the Department.

Very low-income family means a very low-income family as defined at 24 CFR part 813.

4. What provisions may be waived?

The Assistant Secretary for Housing may waive any regulatory provision issued under the statute. Each waiver must be in writing, and must be supported by documentation of the facts and reasons which formed the basis for the waiver. HUD will publish a Federal Register notice informing the public of all waivers granted under this section in accordance with the HUD Reform Act of 1989 and HUD policies regarding publication of waivers.

Management and Maintenance Provisions

5. What maintenance and management standards apply to multifamily housing projects?

(a) Scope. The provisions of this section apply to any multifamily housing project:

(1) That is HUD-owned;

(2) For which HUD is mortgagee-in-possession; or

(3) That is subject to a mortgage held by HUD.

(b) *Maintenance and Management standards.* With respect to projects within the scope of this section, HUD or the owner, as appropriate, shall:

(1) To the greatest extent possible, maintain all occupied projects in a decent, safe, and sanitary condition, and in compliance with any standards established by the Department and under applicable State or local laws, rules, ordinances, or regulations relating to the accessibility and physical condition of the housing;

(2) Maintain full occupancy;

(3) Maintain projects for purposes of providing rental or cooperative housing; and

(4) Manage projects in accordance with the requirements of the Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations at 24 CFR parts 100 et al, which prohibit discrimination in the sale or rental of housing and in related transactions on the basis of race, color, religion, sex, national origin, handicap, or familial status; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8 that prohibit discrimination against disabled individuals in Federally-assisted activities, and 24 CFR part 9, which prohibit discrimination against disabled individuals in Federally-conducted activities; Title VI of the Civil Rights Act of 1964 and implementing regulations at 24 CFR part 1, which prohibit discrimination based on race, color, or national origin in programs receiving Federal financial assistance; the Age Discrimination Act of 1975 and implementing regulations at 24 CFR part 146, which prohibit discrimination based on age in programs receiving Federal financial assistance; and Executive Order 11063, as amended by Executive Order 12259 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107.

6. How may HUD contract for management services, or require the owner of a multifamily project to contract for management services?

(a) *Scope.* The provisions of this section apply to any multifamily housing project:

(1) That is HUD-owned;

(2) For which HUD is mortgagee-in-possession; or

(3) That is subject to a mortgage held by HUD.

(b) *Contracting for management services.* (1) With respect to projects within the scope of this section, HUD may, or may require the owner to, contract for management services for the project with for-profit and nonprofit entities and public agencies, including public housing agencies, on a negotiated, competitive bid, or other basis, at a price determined by HUD to be reasonable, with a manager determined by HUD to be capable of:

(i) Implementing a sound financial and physical management program that is designed to enable the project to meet anticipated operating and maintenance expenses to ensure that the project will remain in a decent, safe, and sanitary condition, and in compliance with any standards under applicable State or local laws, rules, ordinances, or regulations relating to the accessibility and physical condition of the housing, and any such standards established by HUD;

(ii) Responding to the needs of tenants and working cooperatively with tenant organizations;

(iii) Providing adequate organizational, staff, and financial resources to the project; and

(iv) Meeting such other requirements as HUD may determine to be necessary or appropriate.

(2) HUD will conduct outreach efforts to minority-owned and female-owned businesses to become managers of the HUD-owned projects covered by this section, in accordance with Executive Order 11625, as amended by Executive Order 12007 (Minority Business Enterprises), Executive Order 12432 (Minority Business Enterprise Development), and Executive Order 12138 (National Women's Business Enterprise Policy).

7. What occupancy requirements apply to multifamily housing projects?

(a) *Multifamily housing project that is HUD-owned or for which HUD is mortgagee-in-possession.* Occupancy in a multifamily housing project that is HUD-owned or for which HUD is mortgagee-in-possession shall be available on a basis that is comparable to the occupancy requirements that applied to the project immediately before HUD acquired the project or became mortgagee-in-possession, except that preference shall be given to tenants of other HUD-owned multifamily housing projects who are eligible for assistance in accordance with the displacement and relocation provisions at section 17 of this guide.

(b) *Evictions.* Eviction from a HUD-owned multifamily housing project is governed by 24 CFR part 247, subpart B.

(c) *Threat to health and safety.* Whenever HUD determines that there is an immediate threat to the health and safety of the tenants, HUD may require the tenants to vacate the premises and shall provide temporary relocation benefits as provided in section 17 of this guide to tenants required to vacate the premises.

PROJECT RENTS WHILE HUD IS MIP OR OWNER

Unit rents	*Unit rents* in accordance with the rent setting requirements of the project's mortgage insurance or direct loan program while HUD is mortgagee-in-possession (MIP), or in accordance with the rent setting requirements of the project's mortgage insurance or direct loan program in effect immediately before HUD became the owner of the project (section 8(a) of this guide).
Rents payable by tenants	1. *Tenant rent.* Rent the tenant pays will be based on the income certification and the rent payment requirements of the project's mortgage insurance or direct loan program in effect while HUD is MIP or immediately before HUD became the owner of the project (section 8(b)(1) of this guide). 2. *Rent when tenant does not certify income.* If a tenant does not certify income, the tenant must pay the unit rent (section 8(b)(1) of this guide). 3. *Utility allowance.* For a tenant whose rent is based on a percentage of adjusted income, HUD will use a utility allowance to reduce the rent (section 8(b)(2) of this guide). 4. *Project viability.* HUD may adjust the rent to promote project viability (section 8(b)(3) of this guide). 5. *Tenants with rental vouchers or certificates.* Tenant pays rent in accordance with policies and procedures governing such assistance (section 8(b)(4) of this guide).

8. How will rental rates be set when HUD is mortgagee-in-possession (MIP) or owner of a multifamily housing project?

Because of the subsidies involved in making multifamily housing projects affordable, the setting of rents involves two steps: first, establishing the rent on a unit that will be paid to the owner, and second, determining the rent that the tenant pays (with the difference made up by a subsidy), using a number of procedures to obtain income verification and notify tenants of changes in rent. These procedures are explained below.

(a) *Setting unit rents.* Except as modified by this section, for a property where HUD is mortgagee-in-possession (MIP), HUD will set unit rents in accordance with the rent setting requirements of the project's mortgage insurance or direct loan program; or for a property owned by HUD, rents will be set in accordance with the rent setting requirements of the project's mortgage insurance or direct loan program in effect immediately before HUD became the owner of the project.

(b) *Setting rents payable by tenants.* (1) *Tenant rent.* The rent the tenant pays will be based on the income certification and the rent payment requirements of the project's mortgage insurance or direct loan program in effect while HUD is MIP or immediately before HUD became the owner of the project, as affected by any of the factors in paragraphs (b)(2) through (b)(4) of this section. However, if a tenant does not certify income as required by this section, the tenant must pay the unit rent as determined under the rent setting requirements in paragraph (a) of this section.

(2) *Utility allowance.* For a tenant whose rent is based on a percentage of adjusted income (except for rental voucher or rental certificate holders), if the cost of utilities (except telephone) and other housing services for the unit is the responsibility of the tenant to pay directly to the provider of the utility or service, HUD will deduct from the rent to be paid by the tenant to HUD a utility allowance, which is an amount equal to HUD's estimate of the monthly costs of a reasonable consumption of the utilities and other services for the unit for an energy-conservative household of modest circumstances consistent with the requirement of a safe, sanitary, and healthful living environment. If the utility allowance exceeds the percentage of the tenant's adjusted income payable as rent, HUD will pay the difference between the amount payable as rent and the utility allowance to the tenant or, with the consent of the tenant and the utility company, either jointly to the tenant and the utility company or directly to the utility company.

(3) *Rent adjustments for project viability.* For a HUD-owned project, HUD may adjust the rent provided for in paragraphs (b)(1) or (b)(2) of this section if necessary or desirable to maintain the existing economic mix in the project, prevent undesirable turnover, or increase occupancy.

(4) *Tenants who are rental voucher or rental certificate holders.* Tenants assisted with rental vouchers or certificates certify their income to the public housing agency (PHA) administering the assistance, and pay rent pursuant to the policies and procedures governing such assistance.

(c) *Income verification and rent notification procedures.*

(1) *Income certification by tenants.* (i) *In subsidized projects.* (A) For families residing in subsidized projects, when HUD becomes MIP or owner, HUD will request an income certification from each family as soon as practicable after HUD initially assumes management, unless the family's income has been examined by the owner or by HUD not more than four months before HUD's assumption of management.

(B) For each family applying for admission to subsidized projects, HUD will request an income certification to determine the family's eligibility for a subsidized rent, and (if the rent is based on a percentage of adjusted income) the family's subsidized rent, in accordance with 24 CFR part 813.

(ii) *In unsubsidized projects.* (A) For tenants in occupancy when HUD becomes mortgagee-in-possession or owner of an unsubsidized project, HUD may request an income certification from families who are not paying a subsidized rent.

(B) For families applying for admission to such projects, HUD will request sufficient information for income verification to determine the family's ability to pay the unit rent.

(2) *Notice of increases in the amount of rent payable.* Whenever HUD proposes an increase in rents in a HUD-owned multifamily project or a project where HUD is mortgagee-in-possession, HUD will provide tenants 30 days notice of the proposed changes and an opportunity to review and comment on the new rent and supporting documentation. After HUD considers the tenants' comments and has made a decision with respect to its proposed rent change, HUD shall notify the tenants of its decision, with the reasons for the decision. A tenant in occupancy before the effective date of any revised rental rate must be given 30 days notice of the revised rate, and any change in the tenant's rent is subject to the terms of an existing lease. Notices to each tenant must be personally delivered or sent by first class mail. General notices of rent increases to all tenants must be posted in the project office and in appropriate conspicuous and accessible locations around the project.

(3) *Disclosure and verification of Social Security numbers.* Any certifications or reexaminations of the income of tenants or prospective tenants in connection with tenancy under this section are subject to the requirements for the disclosure and verification of

Social Security Numbers, as provided by part 200, subpart T, of this title.

(4) *Signing of consent forms for income verification.* Any certifications or reexaminations of the income of tenants or prospective tenants in connection with tenancy under this section are subject to the requirements for the signing and submitting of consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 200.

PRE-DISPOSITION NOTIFICATION REQUIREMENTS

Pre-foreclosure (section 10 of this guide).	1. *Timing.* Not later than 60 days before foreclosure on any mortgage. 2. *Recipients.* (i) Tenants of the project, and (ii) The unit of general local government in which the project is located. 3. *Contents.* (i) General terms and conditions concerning the sale, future use, and operation of the project that HUD proposes to impose; and, (ii) Whether temporary or permanent relocation is anticipated, and, if so, available displacement and relocation assistance.
Right of first refusal (section 11 of this guide).	1. *Timing.* Before, or not more than 30 days after, HUD acquires title to a multifamily housing project. 2. *Recipients.* (i) The appropriate unit of general local government; (ii) Public housing agencies in the project's market area; (iii) The State agency or agencies designated to receive such notice by the chief executive officer of the State in which the project is located. 3. *Contents.* (i) Description of the project; (ii) Invitation to recipients to make bona fide offers to purchase the project; (iii) Offer of right of first refusal for period of up to 90 days; (iv) Method by which the recipient may respond to HUD.
Notice to tenants and the community (section 12 of this guide).	1. *Timing.* Before, or not more than 30 days after, HUD acquires title to a multifamily housing project. 2. *Recipients.* (i) To the tenants of the project; (ii) To the unit of general local government in which the project is located; and (iii) To the community in which the project is located. 3. *Contents.* (i) Description of the project; (ii) Proposed general terms and conditions concerning the sale, future use, and operation of the project; (iii) Invitation for tenants and their organizations, units of general local government, and other public or nonprofit entities to submit comments on the disposition plan, and/or proposals for disposition which will be considered by HUD in making its property disposition determination.

Notification Requirements

9. How will HUD provide required notifications?

(a) *In general.* HUD may combine two or more of the notifications required by the Statute, as appropriate, to simplify the disposition process. Disposition-related notifications (i.e., pre-foreclosure notification to tenants and units of general local government; pre-disposition community and tenant input notification; state and local government right of first refusal notification) will be made, as appropriate:

(1) 60 or more days before HUD forecloses on a project, or

(2) Before, or not more than 30 days after, HUD acquires a project.

(b) *Methods of notification.* (1) *To tenants.* The notices required to be made to tenants under the Statute will be delivered to each unit in the project, or sent to each unit by first class mail. Where HUD is mortgagee-in-possession or owner of a project, the notice will also be posted in the project office and in appropriate conspicuous and accessible locations around the project.

(2) *To the unit of general local government.* The notice required to be made to a unit of general local government under the statute will be sent to the chief executive officer of the unit of general local government by first class mail. For purposes of receiving or sending any notices or information under the statute, the unit of general local government is its chief executive officer, or the person designated by the chief executive officer to receive or send the notice or information.

(3) *To the community or any other party.* HUD will consult with tenants and their organizations, officials of units of general local government, and other entities as HUD determines to be appropriate, to identify community recipients of any notification required by the statute. Any notice required to be made to any party other than a tenant or a unit of general local government will be sent by first class mail.

10. What notification must be given before foreclosure?

(a) *Timing and recipients of notice.* Not later than 60 days before foreclosing on any mortgage held by the Department on any multifamily housing project, HUD will provide notice of the proposed foreclosure sale to the tenants of the project and to the unit of general local government in which the project is located.

(b) *Contents of notice.* The notice will describe the general terms and conditions concerning the sale, future use, and operation of the project that HUD proposes to impose on a purchaser other than HUD through the foreclosure. The notice will also state whether temporary or permanent relocation is anticipated as a result of repairs or the proposed disposition, including any anticipated conversion of use, and, if so, the levels of displacement and relocation assistance available as described in section 17 of this guide.

11. Who has a right of first refusal for properties that HUD is selling, and what kind of notice must HUD provide?

(a) *Timing and recipients of notice.* Before, or not more than 30 days after,

HUD acquires title to a multifamily housing project, HUD will provide notice of the right of first refusal to the appropriate unit of general local government, as well as public housing agencies in the project's market area, and the State agency or agencies designated to receive such notice by the chief executive officer of the State in which the project is located.

(b) *Content of notice.* The notice will describe the project acquired by HUD, and contain an invitation to recipients to make bona fide offers to purchase the project. The notice will state:

(1) That for a period specified in the notice, not to exceed 90 days from the time the notification is made, HUD will not sell or offer to sell the project other than to a recipient of the notice, unless the recipients notify HUD sooner that they will not make an offer to purchase the project;

(2) That if a recipient expresses interest within the specified period in acquiring the project, HUD will consult with the interested parties in the preparation of the disposition plan and the terms and conditions of the sale of the project. HUD will accept a bona fide offer to purchase the project if the offer complies with the terms and conditions of the disposition plan for the project, or is otherwise acceptable to HUD;

(3) The method by which the recipient may respond to HUD with an expression of interest or a bona fide offer, or by which the recipient may notify HUD that an offer will not be made.

12. What kind of notice must HUD provide to tenants and the community when HUD is selling a project?

(a) *Timing and recipients of notice.* Before, or not more than 30 days after, HUD acquires title to a multifamily housing project, HUD will provide notice of HUD's acquisition and proposed disposition of the project to the tenants of the project, to the unit of general local government, and to the community in which the project is located.

(b) *Content of notice.* The notice will describe the project acquired by HUD, and the general terms and conditions concerning the sale, future use, and operation of the project as proposed by HUD. The notice will, as appropriate, state:

(1) HUD has acquired the project.

(2) During HUD's ownership, HUD will, to the extent feasible, assure that the project is maintained in a decent, safe, and sanitary condition.

(3) HUD is developing a final disposition plan for the project.

(4) HUD normally seeks to sell HUD-owned projects as rapidly as possible.

(5) HUD's interest in learning of tenant, community, and local government plans and capacity for the acquisition of the project for use as rental or cooperative housing.

(6) HUD's final determination of the terms and conditions to be imposed on the disposition of the project will not be made until after HUD considers the comments received from tenants, the community, and the unit of general local government within the specified comment period.

(7) A brief description of a proposed manner of disposition of the project.

(8) A description of the pending notice of the right of first refusal to purchase the project as described in section 11 of this guide.

(9) That alternative uses of units in the project may be part of the project's disposition, and that:

(i) Some of the units in the project may be made available for uses other than rental or cooperative uses, including low-income homeownership opportunities, or community space, office space for tenant or housing-related service providers or security programs, or small business uses, if such uses benefit the tenants of the project;

(ii) Some of the units in the project may be used in any manner, if the Department and the unit of general local government or area-wide governing body determine that such use will further fair housing, community development, or neighborhood revitalization goals;

(iii) Such alternative uses of units may only take place if:

(A) Tenant-based Section 8 rental assistance is made available to each eligible family residing in the project that is displaced as a result of such actions; and

(B) The Department determines that sufficient habitable, affordable rental housing is available in the market area in which the project is located to ensure use of such assistance.

(10) That for any very low-income family who is a preexisting tenant of the project who upon disposition of the project would be required to pay rent in an amount in excess of 30 percent of the adjusted income of the family:

(i) For a period of 2 years beginning upon the date of the acquisition of the project under the disposition, the rent for the unit occupied by the family may not be increased above the rent charged immediately before the acquisition; and

(ii) The family shall be considered displaced for purposes of the preferences for assistance under sections 6(c)(4)(A)(i), 8(d)(1)(A)(i), and 8(o)(3)(B) of the United States Housing Act of 1937.

(11) Whether temporary or permanent relocation is anticipated as a result of repairs or the proposed disposition, including any anticipated conversion of use, and, if so, the levels of relocation assistance available as described in section 17 of this guide.

(12) That tenants and their organizations, units of general local government, and other public or nonprofit entities are invited to submit comments on the disposition plan, and/or proposals (*e.g.*, expressions of interest to convert the project to a cooperative or other form of resident-controlled ownership, or other resident initiative), which will be considered by HUD in making its property disposition determination.

(13) That comments must be submitted to HUD within 30 days of receipt of the notice.

(14) That the full disposition recommendation and analysis and other supporting information will be available for inspection and copying at the HUD field office.

METHODS OF DISPOSITION

Foreclosure sales. (section 13(a) of this guide).	HUD may dispose of a project at a foreclosure sale: 1. In accordance with the Multifamily Mortgage Foreclosure Act, or 2. In accordance with other Federal or State foreclosure law.
Sale of HUD-owned projects. (section 13(b) of this guide).	HUD may sell a HUD-owned project using any of the following procedures: 1. Competitive bid; 2. Auction; 3. Request for proposals; 4. Negotiated sale, as described in section 13(b)(1) and (2); or 5. Any other method, on such terms as HUD considers appropriate.

METHODS OF DISPOSITION—Continued

Transfer for use under other HUD programs. (section 13(c) of this guide).	HUD, under an agreement, may transfer a multifamily housing project: 1. To a public housing agency (PHA) for use of the project as public housing; or 2. To an entity eligible to own or operate 202 or 811 supportive housing.

Disposition Procedures

13. What are the different methods that may be used for the disposition of a multifamily housing project?

HUD may use any of the following methods, as appropriate, for the disposition of a multifamily housing project:

(a) *Foreclosure sales.* Foreclosure sales will be conducted, at HUD's discretion, in accordance with the Multifamily Mortgage Foreclosure Act, or other Federal or State foreclosure law, on such terms as HUD considers appropriate to further the goals and purposes stated in section 2 of this guide.

(b) *Sale of HUD-owned projects.* HUD may dispose of a HUD-owned multifamily project by competitive bid, auction, request for proposals, or other method, on such terms as HUD considers appropriate to further the goals and purposes stated in section 2 of this guide. When HUD conducts a negotiated sale involving the disposition of a project to a person or entity without a public offering, the following provisions apply:

(1) HUD may negotiate the sale of any project to an agency of the Federal, State, or local government.

(2) When HUD determines that a purchaser can demonstrate the capacity to own and operate a project in accordance with standards set by HUD, and/or a competitive offering will not generate offers of equal merit from qualified purchasers, HUD may approve a negotiated sale of a subsidized project to:

(i) A resident organization wishing to convert the project to a nonprofit or limited equity cooperative;

(ii) A cooperative (e.g., nonprofit limited equity, consumer cooperative, mutual housing organization) with demonstrated experience in the operation of nonprofit (and preferably low-income) housing;

(iii) A nonprofit entity that will continue to operate the project as low-income housing and whose governing board is composed of project residents;

(iv) A State or local governmental entity with the demonstrated capacity to acquire, manage, and maintain the project as housing available to and affordable by low-income residents;

(v) A State or local governmental or nonprofit entity with the demonstrated capacity to acquire, manage, and maintain the project as a shelter for the homeless or other public purpose, generally when the project is vacant or has minimal occupancy and is not needed in the area for continued use as rental housing for the elderly or families; or

(vi) Other nonprofit organizations.

(c) *Transfer for use under other HUD programs.*

(1) *In general.* Subject only to the requirements of an agreement under paragraph (c)(2) of this section, HUD may transfer a multifamily housing project:

(i) To a public housing agency (PHA) for use of the project as public housing; or

(ii) To an entity eligible to own or operate housing assisted under section 202 of the Housing Act of 1959 or under section 811 of the Cranston-Gonzalez National Affordable Housing Act for use as supportive housing under either of those sections.

(2) *Transfer agreement.* An agreement providing for the transfer of a project as described in paragraph (c)(1) of this section must:

(i) Contain such terms, conditions, and limitations as HUD determines to be appropriate, including requirements to ensure use of the project as public housing, supportive housing under section 202 of the Housing Act of 1959, or supportive housing under section 811 of the Cranston-Gonzalez National Affordable Housing Act, as applicable; and

(ii) Ensure that no tenant of the project will be displaced as a result of the transfer.

14. What qualities does HUD look for in a purchaser?

(a) *Foreclosure sales.* HUD will dispose of a multifamily housing project through a foreclosure sale only to a purchaser that the Department determines is capable of implementing a sound financial and physical management program that is designed to enable the project to meet anticipated operating and repair expenses to ensure that the project will remain in decent, safe, and sanitary condition and in compliance with any standards under applicable State or local laws, rules, ordinances, or regulations relating to the physical condition of the housing and any such standards established by the Department.

(b) *HUD-owned multifamily housing projects.* Sales of HUD-owned multifamily housing projects may be made only to a purchaser determined by the Department to be capable of:

(1) Satisfying the conditions of the disposition plan, as described in section 15 of this guide, for the project;

(2) Implementing a sound financial and physical management program that is designed to enable the project to meet anticipated operating and repair expenses to ensure that the project will remain in decent, safe, and sanitary condition and in compliance with any standards under applicable State or local laws, rules, ordinances, or regulations relating to the physical condition of the housing and any such standards established by the Department;

(3) Responding to the needs of the tenants and working cooperatively with tenant organizations;

(4) Providing adequate organizational, staff, and financial resources to the project; and

(5) Meeting such other requirements as HUD may determine to be appropriate for the particular project.

15. What kind of disposition plan will HUD prepare before selling a project?

(a) *In general.* Before disposing of a HUD-owned multifamily housing project, HUD will develop an initial and a final disposition plan for the project that specifies the minimum terms and conditions for the disposition of the project, the sales price that is acceptable to HUD, and the assistance that HUD plans to make available to a prospective purchaser.

(b) *Market-wide plans.* In developing the disposition plan under this section for a HUD-owned multifamily housing project located in a market area in which at least 1 other HUD-owned multifamily housing project is located, HUD may coordinate the disposition of HUD-owned multifamily housing projects located within the same market area to the extent and in such a manner as the Department determines appropriate to carry out the goals and

purposes stated in section 2 of this guide.

(c) *Sales price.* The sales price in the disposition plan will be reasonably related to the intended use of the project after the sale, any rehabilitation requirements for the project, the rents for units in the project that can be supported by the market, the amount of rental assistance available for the project under Section 8 of the United States Housing Act of 1937, the occupancy profile of the project (including family size and income levels for tenant families), and any other factors that HUD considers appropriate.

(d) *Community and tenant input.* In developing the initial and final disposition plans, HUD will consider any timely input from officials of the unit of general local government affected, the community in which the project is situated, and the tenants of the project, including the comments received in response to the notice described in section 12 of this guide. To obtain this input, HUD may provide technical assistance, directly or indirectly, and may use amounts available for technical assistance under the Emergency Low Income Housing Preservation Act of 1987, subtitle C of the Low-Income Housing Preservation and Resident Homeownership Act of 1990, subtitle B of title IV of the Cranston-Gonzalez National Affordable Housing Act, or the Statute, for the provision of such technical assistance. Recipients of technical assistance funding under the provisions referred to in this subparagraph may provide technical assistance to the extent of such funding, notwithstanding the source of the funding.

(e) *Environmental requirements.* HUD will perform, and include in the final disposition plan, the environmental reviews required by 24 CFR part 50.

TABLE OF ACTIONS TO FACILITATE DISPOSITION

All Multifamily Housing Projects	*Required Actions* 1. Displacement requirements (section 17 of this guide). 2. Very-low income preexisting tenant—2 year rent freeze if rent after disposition more than 30 percent of adjusted income (section 18 of this guide). 3. Nondiscrimination against Section 8 certificate holders and voucher holders (section 19 of this guide).
Subsidized Projects	*Basic Actions* 1. Provide project-based Section 8 assistance to at least all units that, before acquisition or foreclosure, received: Rent Supp, RAP, Sec. 23, project-based Section 8 (section 20(a) of this guide). 2. Vacancy in any assisted unit must be filled by a family that is eligible for the assistance (section 20(b) of this guide). 3. Rent and use restrictions on BMIR, 236, or 202 subsidized project units that were not covered before acquisition or foreclosure by Rent Supp, RAP, Sec. 23, or project-based Section 8 (section 20(c) of this guide). *Alternatives to Basic Actions* 1. Assistance to, or restrictions on, units in unsubsidized projects instead of assistance to units in subsidized projects (section 21(a) of this guide). 2. Substitution of tenant-based Section 8 assistance to low-income families instead of project-based assistance to units (section 21(b) of this guide). 3. Use of the additional assistance and restrictions permitted by the Statute (section 21(b) of this guide).
Unsubsidized Projects	*Basic Actions* 1. Provide project-based Section 8 assistance for all units that, before acquisition or foreclosure, received assistance under: (i) The new construction and substantial rehabilitation program under section 8(b)(2) of the United States Housing Act of 1937 (as in effect before October 1, 1983); (ii) The property disposition program under section 8(b) of such Act; (iii) The project-based certificate program under section 8 of such Act; (iv) The moderate rehabilitation program under section 8(e)(2) of such Act; (v) Section 23 of such Act (as in effect before January 1, 1975); (vi) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or (vii) Section 8 of the United States Housing Act of 1937, following conversion from assistance under section 101 of the Housing and Urban Development Act of 1965 (section 22(a) of this guide). 2. Provide tenant-based Section 8 assistance to preexisting tenants of LMSA-assisted units (section 22(b) of this guide). *Alternatives to Basic Actions* 1. Substitution of tenant-based Section 8 assistance to low-income families instead of project-based assistance to units (section 23(a) of this guide). 2. Use of the additional assistance and restrictions permitted by the Statute (section 23(b) of this guide).
All Multifamily Housing Projects	*Additional Actions* 1. Discounted sales price (section 25 of this guide). 2. Additional use and rent restrictions (section 26 of this guide). 3. Short-term loans (section 27 of this guide). 4. Up-front grants (section 28 of this guide). 5. Additional tenant-based assistance (section 29 of this guide). 6. Alternative uses (section 30 of this guide). 6. Rebuilding (section 31 of this guide). 7. Emergency assistance funds (section 32 of this guide). 8. Determination not to preserve (section 33 of this guide).

All Multifamily Housing Projects—Required Actions

16. What actions must be taken in the disposition of all multifamily housing projects?

The requirements regarding tenants who are displaced (section 17 of this guide), unassisted very low-income tenants (section 18 of this guide), and nondiscrimination against Section 8 certificate holders and voucher holders (section 19 of this guide), apply in the disposition of all multifamily housing projects.

17. What actions must be taken concerning tenants who are displaced by the disposition of a multifamily housing project?

(a) *Scope of section.* This section applies to all HUD-owned multifamily housing projects and all multifamily housing projects subject to HUD-held mortgages. When HUD is not the mortgagee-in-possession or owner, this section applies to the owner of the project, if HUD has authorized the demolition of, repairs to, or conversion of the use of the multifamily housing project.

(b) *Minimizing displacement.* Consistent with the other goals and objectives of the Statute, all reasonable steps shall be taken to minimize the displacement of persons (families, individuals, businesses, and nonprofit organizations) from a project covered by this part. If displacement or temporary relocation will occur in connection with the disposition of a project, HUD may require the purchaser of the project to provide assistance in accordance with this section.

(c) *Relocation assistance at non-URA levels.* Whenever the displacement of a residential tenant (family or individual) occurs in connection with the management or disposition of a multifamily housing project, but is not subject to paragraph (d) of this section (*e.g.,* occurs as a direct result of HUD repair or demolition of all or a part of a HUD-owned multifamily housing project or as a direct result of the foreclosure of a HUD-held mortgage on a multifamily housing project or sale of a HUD-owned multifamily housing project without federal financial assistance), the displaced tenant is to be eligible for the following relocation assistance:

(1) Advance written notice of the expected displacement. The notice shall be provided at least 60 days before displacement, describe the assistance and the procedures for obtaining the assistance, and contain the name, address and phone number of an official responsible for providing the assistance;

(2) Other advisory services, as appropriate, including counseling, referrals to suitable (and where appropriate, accessible), decent, safe, and sanitary replacement housing, and fair housing-related advisory services;

(3) Payment for actual reasonable moving expenses, as determined by HUD;

(4) For displaced eligible families and individuals—

(i) The opportunity to relocate to a suitable (and where appropriate, accessible), decent, safe, and sanitary dwelling unit in a HUD-owned multifamily housing project, in a public housing project, or in another HUD subsidized multifamily housing project,

(ii) Assistance under the Section 8 Certificate program (see 24 CFR 882.209(a)(4)(ii)(B)) or the Housing Voucher program (see 24 CFR 887.155(c)), if the assistance is available; or

(iii) The right to return, whenever possible, to a repaired or rebuilt unit.

(5) Such other federal, State or local assistance as may be available.

(d) *Relocation assistance at URA levels.* (1) *General.* Whenever assistance under 24 CFR part 886, subpart C (or other federal financial assistance, as defined in 49 CFR 24.2(j)) is provided in connection with the purchase, demolition, or rehabilitation of a multifamily housing project by a third party, any resulting displacement is subject to this paragraph. A displaced person (defined in paragraph (d)(3) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the URA, implementing regulations at 49 CFR part 24, and this section.

(2) *Definition of ''initiation of negotiations''.* Under the URA, for purposes of determining the method for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, the term ''initiation of negotiations'' means the transfer of title to the purchaser.

(3) *Definition of displaced person.* (i) The term ''displaced person'' means any person (family, individual, business, or nonprofit organization) that moves from the real property, or moves personal property from the real property, permanently, as a direct result of acquisition, rehabilitation or demolition for a federally assisted project. This includes, but is not limited to:

(A) A person that moves permanently from the real property after receiving notice requiring such move, if the move occurs on or after the date of the transfer of title to the purchaser.

(B) Any person that HUD determines was displaced as a direct result of acquisition, rehabilitation or demolition for an assisted project.

(C) A tenant-occupant of a dwelling unit who moves from the building/complex, permanently, after the transfer of title to the purchaser, if the move occurs before the tenant is provided notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, sanitary, and where appropriate, accessible dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions shall include a monthly rent, including estimated average monthly utility costs, that does not exceed the greater of the tenant's monthly rent before transfer of title to the purchaser and estimated average monthly utility costs, or that is affordable, as defined in this part.

(D) A tenant-occupant of a dwelling unit who is required to relocate temporarily for the project, but does not return to the building/complex, if either the tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, or other conditions of the temporary relocation are not reasonable.

(E) A tenant-occupant who moves from the building/complex permanently after he or she has been required to move to another unit in the same building/complex for the project, if either the tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(ii) Notwithstanding the provisions of paragraph (d)(3)(i) of this section, a person does not qualify as a ''displaced person'' if:

(A) The person is excluded under 49 CFR 24.2(g)(2).

(B) The person has been evicted for a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State, or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance.

(C) The person moves into the property after transfer of title to the purchaser.

(D) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for an assisted project.

(e) *Temporary relocation (URA and non-URA relocation assistance).* Residential tenants, who will not be required to move permanently, but who must relocate temporarily (e.g., to permit property repairs), shall be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing and any increase in monthly rent or utility costs. The party responsible for this requirement may, at its option, perform the services involved in temporarily relocating the tenants or pay for such services directly; and

(2) Appropriate advisory services, including reasonable advance written notice of the date and approximate duration of the temporary relocation; the suitable (and where appropriate, accessible), decent, safe, and sanitary housing to be made available for the temporary period; the terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the repairs; and the right to financial assistance provided under paragraph (e)(1) of this section.

(f) *Appeals.* If a person disagrees with the purchaser's determination concerning the person's eligibility for relocation assistance or the amount of the assistance for which the person is eligible, the person may file a written appeal of that determination with the owner or purchaser. A person who is dissatisfied with the purchaser's determination on his or her appeal may submit a written request for review of that decision to the HUD Field Office responsible for administering the URA in the area.

18. What actions must be taken concerning very low-income tenants in the disposition of a multifamily housing project?

HUD will require that for a period of 2 years, beginning upon the date of disposition of a multifamily housing project, the rent for any unit occupied by a very low-income family, that is a preexisting tenant and that would be required to pay a rent that is more than 30 percent of the adjusted income (as defined in part 813) of the family, may not be increased above the rent charged immediately before the acquisition. Such a family will also be considered displaced for purposes of the preferences for assistance under sections 6(c)(4)(A)(i), 8(d)(1)(A)(i), and 8(o)(3)(B) of the United States Housing Act of 1937.

19. What restrictions concerning nondiscrimination against Section 8 certificate holders and voucher holders apply in the disposition of a multifamily housing project?

The purchaser of any multifamily housing project shall not refuse unreasonably to lease a dwelling unit offered for rent, offer to sell cooperative stock, or otherwise discriminate in the terms of tenancy or cooperative purchase and sale because any tenant or purchaser is the holder of a Certificate of Family Participation or a Voucher under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), or any successor legislation. This provision is limited in its application, for tenants or applicants with Section 8 Certificates or their equivalent (other than Vouchers), to those units which rent for an amount not greater than the Section 8 Fair Market Rent, as determined by HUD. The purchaser's agreement to this condition must be contained in any contract of sale and also may be contained in any regulatory agreement, use agreement, or deed entered into in connection with the disposition.

Subsidized Projects—Basic and Alternative Actions to Facilitate Disposition

20. What are the basic actions that may be taken in the disposition of a subsidized project?

The basic assistance that HUD will provide and the basic restrictions HUD will require in the disposition of a subsidized project depend upon the profile of the project's units and tenants, as follows:

(a) *Assisted units—provision of project-based Section 8 assistance.* Except as noted in section 21 of this guide, and to the extent budget authority is available, HUD will provide project-based Section 8 assistance to assist at least all of a subsidized project's units that were covered, before acquisition or foreclosure, by the rent subsidies (Rent Supp, RAP, Sec. 23, project-based Section 8) included in the definition of a subsidized project.

(b) *Assisted units—tenant eligibility restrictions.* The contract for project-based Section 8 assistance in accordance with paragraph (a), above, will provide that when a vacancy occurs in any unit that requires such assistance, but which was occupied by a family ineligible for such assistance, the owner will lease the available unit to a family that is eligible for the assistance.

(c) *Unassisted units—use and rent restrictions.* HUD will require use or rent restrictions on BMIR, 236, or 202 subsidized projects to ensure that units that were not covered before acquisition or foreclosure by Rent Supp, RAP, Sec. 23, or project-based Section 8 rent subsidies remain available and affordable for the remaining useful life of the project.

21. What alternatives to the basic actions are available in the disposition of subsidized projects?

In the disposition of a subsidized project, HUD may take the following alternative actions instead of the basic actions listed in section 20 of this guide:

(a) *Unit substitution: assistance to, or restrictions on, units in unsubsidized projects instead of assistance to units in subsidized projects.* Instead of providing project-based Section 8 assistance as described in section 20(a) of this guide, HUD may, in unsubsidized projects located in the same market area, provide project-based Section 8 assistance to units to be occupied by very low-income persons, or impose use and rent restrictions to assure that units remain available to and affordable by very low-income families for the remaining useful life of the project. When this unit substitution procedure is used, the total number of unsubsidized project units provided with assistance and/or placed under use and rent restrictions must be at least equal to the number of subsidized project units that would have received project-based Section 8 in the absence of unit substitution. In addition, HUD will make tenant-based Section 8 assistance available to low-income families residing in the subsidized project's units that would have received project-based Section 8 assistance if this unit substitution alternative had not been used.

(b) *Substitution of tenant-based Section 8 assistance to low-income families instead of project-based assistance to units.* Instead of providing project-based Section 8 assistance as described in section 20(a) of this guide, HUD may enter into annual contribution contracts with public housing agencies to provide tenant-based Section 8 assistance to all low-income families who reside, on the date that the project is acquired by a purchaser other than HUD, in units that would have been eligible for the project-based Section 8 assistance as described in section 20 of this guide. Tenant-based Section 8 assistance may be used in this way as a substitute for project-based Section 8 assistance in not more than 10 percent of the aggregate number of subsidized project units disposed of by HUD in any fiscal year, and only if HUD determines that there is available in the market area in which the project is located an adequate supply of habitable, affordable

housing for very low-income families and other low-income families using tenant-based assistance. The number of units eligible for this form of substitution within the 10 percent limit will be estimated at the beginning of each fiscal year, taking into consideration the aggregate number of subsidized project units disposed of by HUD in the immediately preceding fiscal year and the disposition activity planned for the current fiscal year.

(c) *Additional actions.* Instead of, or in addition to, providing project-based Section 8 assistance in the disposition of a subsidized project as described in section 20(a) of this guide, HUD may make use of the additional actions to facilitate the disposition of multifamily housing projects as described in sections 24 through 33 of this guide.

Unsubsidized Projects—Basic and Alternative Actions to Facilitate Disposition

22. What are the basic actions that may be taken in the disposition of an unsubsidized project?

The basic assistance that HUD will provide and the basic restrictions HUD will require in the disposition of an unsubsidized project depend upon the profile of the project's units and tenants, as follows:

(a) *Assisted units—provision of project-based Section 8 assistance.* Except as noted in section 23 of this guide, and to the extent budget authority is available, HUD will provide project-based Section 8 assistance for all of an unsubsidized project's units that were covered, before acquisition or foreclosure, by an assistance contract under:

(1) The new construction and substantial rehabilitation program under section 8(b)(2) of the United States Housing Act of 1937 (the 1937 Act) (as in effect before October 1, 1983);

(2) The property disposition program under section 8(b) of the 1937 Act;

(3) The project-based certificate program under section 8 of the 1937 Act;

(4) The moderate rehabilitation program under section 8(e)(2) of the 1937 Act;

(5) Section 23 of the 1937 Act (as in effect before January 1, 1975);

(6) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or

(7) Section 8 of the 1937 Act, following conversion from assistance under section 101 of the Housing and Urban Development Act of 1965.

(b) *LMSA-assisted units—provision of tenant-based section 8 assistance.* HUD will provide tenant-based Section 8 assistance for families that are preexisting tenants of unsubsidized projects in units that, immediately before foreclosure or acquisition of the project by HUD, were covered by an assistance contract under the loan management set-aside program under section 8(b) of the United States Housing Act of 1937.

23. What alternatives to the basic actions are available in the disposition of unsubsidized projects?

In disposing of an unsubsidized project, HUD may take the following alternative actions instead of the basic actions listed in section 22 of this guide:

(a) *Substitution of tenant-based Section 8 assistance to low-income families instead of project-based assistance to units.* Instead of providing project-based Section 8 assistance as described in section 22 of this guide, HUD may enter into annual contribution contracts with public housing agencies to provide tenant-based Section 8 assistance to all low-income families who reside, on the date that the project is acquired by a purchaser other than HUD, in units eligible for the project-based Section 8 assistance as described in section 22 of this guide. Tenant-based Section 8 assistance may be used in this way as a substitute for project-based Section 8 assistance only if HUD determines that there is available in the market area in which the project is located an adequate supply of habitable, affordable housing for very low-income families and other low-income families using tenant-based assistance.

(b) *Additional actions.* Instead of, or in addition to, providing project-based Section 8 assistance in the disposition of an unsubsidized project as described in section 22 of this guide, HUD may make use of the additional assistance and restrictions for the disposition of multifamily housing projects as described in sections 24 through 33 of this guide.

All Multifamily Housing Projects—Additional Actions to Facilitate Disposition

24. What guidelines will HUD apply in determining which additional actions to take in the disposition of a multifamily housing project?

The additional actions to facilitate disposition available under this subpart are intended to replace, supplement or make more cost effective the Section 8 assistance that would otherwise be required, and are to be provided in a manner consistent with the goals and purposes stated in section 2 of this guide and, unless otherwise noted:

(a) On terms that will ensure that at least the units in the project otherwise required to receive project-based Section 8 assistance as described in section 20(a) of this guide (for a subsidized project) and in section 22(a) of this guide (for an unsubsidized project) are available to and affordable by low-income persons for the remaining useful life of the project, with use or rent restrictions as HUD may prescribe; and

(b) With tenant-based Section 8 assistance to any very low-income families who would have received project-based assistance under Section 8 as described in section 20(a) of this guide (for a subsidized project) and in section 22(a) of this guide (for an unsubsidized project), but because of action taken as described in sections 24 through 33 of this guide, did not receive such assistance, and are left residing in units of the project with rents that exceed the amount payable as rent under section 3(a) of the United States Housing Act of 1937 for very low-income families.

25. May HUD reduce the sales price for a project?

HUD may reduce the selling price of a project. The sales price for a project will be reasonably related to the intended use of the property as affordable housing for very low-income tenants after sale, any rehabilitation requirements for the project, the rents for units in the project that can be supported by the market, the amount of project-based Section 8 assistance being made available by HUD in the disposition of the project, the occupancy profile of the project (including family size and income levels for tenant families), and any other factors that the Department considers appropriate.

26. May HUD require additional use and rent restrictions?

HUD may require units in a project to be subject to use or rent restrictions to provide that the units will be available to and affordable by low- and very low-income persons for the remaining useful life of the project.

27. May HUD provide short-term loans to facilitate the sale of a project?

HUD may provide short-term loans to facilitate the sale of a multifamily housing project if:

(a) Authority for such loans is provided in advance in an appropriation Act;

(b) The loan has a term of not more than 5 years;

(c) HUD determines, based upon documentation provided by the purchaser, that the purchaser has obtained a commitment of permanent financing to replace the short-term loan

from a lender who meets standards established by the Department; and

(d) The terms of the loan are consistent with prevailing practices in the marketplace or the provision of the loan results in no cost to the Government, as defined in section 502 of the Congressional Budget Act of 1974.

28. Under what conditions may HUD provide up-front grants?

HUD may utilize the budget authority provided for contracts issued under this part for project-based Section 8 assistance to (in addition to providing project-based Section 8 rental assistance) provide up-front grants for the necessary cost of rehabilitation and other HUD-approved related development costs to reduce the level of Section 8 contract rents if HUD determines that action under this section is more cost-effective than providing project-based Section 8 assistance as described in section 20(a) of this guide (for a subsidized project) and in section 22(a) of this guide (for an unsubsidized project).

29. What additional tenant-based assistance may HUD offer?

To facilitate the sale of a multifamily housing project, HUD may make tenant-based Section 8 assistance available to families residing in a multifamily housing project who are eligible to receive tenant-based assistance but who do not qualify for project-based assistance.

30. How may HUD provide for alternative uses of units in the disposition of a multifamily housing project?

(a) *In general.* Notwithstanding any other provision of law, after providing notice to and an opportunity for comment by preexisting tenants, HUD may allow up to:

(1) 10 percent of the total number of rental housing units in multifamily housing projects that are disposed of by the Department during any fiscal year to be made available for uses other than rental or cooperative uses, such as, low-income homeownership opportunities, or in any particular project, community space, office space for tenant or housing-related service providers or security programs, or small business uses, if such uses benefit the tenants of the project; and

(2) 5 percent of the total number of rental housing units in multifamily housing projects that are disposed of by the Department during any fiscal year to be used in any manner, if HUD and the unit of general local government or area-wide governing body determine that such use will further fair housing, community development, or neighborhood revitalization goals.

(b) *Computation of number of eligible units.* The number of units eligible for alternate uses in any fiscal year will be determined at the beginning of the fiscal year as the applicable percentages in paragraphs (a)(1) or (2) of this section (i.e., either 10 percent or 5 percent) of the estimated total number of units to be disposed of in the fiscal year, taking into consideration the total number of units in multifamily housing projects disposed of by the Department in the immediately preceding fiscal year, and the extent of the disposition activity planned in the current fiscal year.

(c) *Displacement protection.* HUD may take actions under paragraph (a) of this section only if:

(1) Tenant-based Section 8 assistance is made available to each family eligible for such assistance residing in the project that is displaced as a result of such actions; and

(2) HUD determines that sufficient habitable, affordable rental housing is available in the market area in which the project is located to ensure use of such assistance.

31. What disposition assistance may be available to rebuild a multifamily housing project?

(a) Notwithstanding any provision of section 8 of the United States Housing Act of 1937, HUD may provide project-based assistance as described in section 20(a) of this guide (for a subsidized project) and in section 22(a) of this guide (for an unsubsidized project) to support the rebuilding of a HUD-owned multifamily housing project rebuilt or to be rebuilt (in whole or in part and on-site, off-site, or in a combination of both) in connection with a disposition under this part, if HUD determines all of the following:

(1) The project is not being maintained in a decent, safe, and sanitary condition;

(2) The costs to HUD for rebuilding are such that the monthly debt service needed to amortize the cost of relocating tenants, demolition, site preparation, rebuilding, operating expenses, and a reasonable return to the purchaser cannot be provided with rents that are within 120 percent of the most recently published Section 8 Fair Market Rents for Existing Housing (24 CFR part 888, subpart A), and would be less expensive than rehabilitation;

(3) The unit of general local government in which the project is located approves the rebuilding and makes a financial contribution or other commitment to the project determined by HUD to be satisfactory;

(4) The rebuilding is a part of a local neighborhood revitalization plan approved by the unit of general local government.

(b) The provisions described in section 17 of this guide apply to any tenants of the project who are displaced through an action taken under paragraph (a) of this section.

32. What emergency assistance funds may be provided to tenants?

HUD may make arrangements with State agencies and units of general local government of States receiving emergency assistance under part A of title IV of the Social Security Act for the provision of assistance under that Act on behalf of eligible families who would reside in any multifamily housing projects.

33. Under what circumstances may HUD make a determination not to preserve a project or a part of a project?

HUD may determine to demolish, or otherwise dispose of, a HUD-owned multifamily housing project, or any portion of such a project, or to foreclose a HUD-held mortgage on a multifamily housing project, without ensuring its continued availability as affordable rental or cooperative housing for low- and very low-income families under appropriate circumstances which may include one or more of those listed in paragraphs (a) through (g) of this section, below. If HUD decides not to preserve an occupied multifamily housing project at a foreclosure sale or sale of a HUD-owned project, tenants must be provided relocation assistance as described in section 17 of this guide.

(a) The costs to HUD of rehabilitation are such that the monthly debt service needed to amortize the cost of rehabilitation, operating expenses, and a reasonable return to the purchaser cannot be provided with rents that are, for subsidized and formerly subsidized projects, within 120 percent of the most recently published Section 8 Fair Market Rents for Existing Housing (24 CFR part 888, subpart A) or, for unsubsidized and formerly unsubsidized projects, within rents obtainable in the market.

(b) Construction is substantially incomplete.

(c) Preservation is not feasible because of environmental factors that cannot be mitigated by HUD or the purchaser. For example, when the project is located on a site that cannot be made to comply with the Section 8 Site and Neighborhood standards in 24 CFR 886.307(k) because of factors that adversely affect the health, safety and general welfare of residents such as air pollution; smoke; mud slides; fire or explosion hazards. Preservation may also be infeasible because of significantly deteriorated surrounding

neighborhood conditions with inadequate police or fire protection; high crime rates; drug infestation; or lack of public community services needed to support a safe and healthy living environment for residents.

(d) HUD determines the project is unfit for rehabilitation.

(e) Rehabilitation would cost more than constructing comparable new housing.

(f) A reduction in the number of units in the project will enhance long-term project viability, for example, demolition of a building to provide space for a playground, open space, or combining one-bedroom units to create larger units for families.

(g) Continued preservation of the project as rental or cooperative housing is not compatible with State or local land use plans for the area in which the project is located.

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March 21, 1996

Part III

The President

Proclamation 6872—Women's History Month, 1996

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Presidential Documents

Title 3—

The President

Proclamation 6872 of March 19, 1996

Women's History Month, 1996

By the President of the United States of America

A Proclamation

It is impossible to fully appreciate America's proud history without recognizing the extraordinary contributions that women have made to our country since its founding. Women's History Month provides an opportunity to celebrate the countless women who have enriched our Nation and to ensure that their achievements—in homes and businesses, schools and hospitals, courtrooms and statehouses—will always be remembered.

We have come a long way since Abigail Adams asked her husband John to ''remember the ladies'' when drafting the Constitution, and we recognize that women not only have broadened and reshaped the path laid by our Founding Fathers, but also have made new avenues toward progress and justice. Female workers filled the textile mills that drove the Industrial Revolution. Women like Susan B. Anthony, Ida B. Wells-Barnett, and Elizabeth Cady Stanton fought tirelessly for suffrage and women's rights. Jane Addams founded America's first settlement house for poor immigrants and established social work as a new and respected field. And farm and migrant laborers across the country gained the leadership of Dolores Huerta when she joined the newly created United Farm Workers Union.

Indeed, there is no aspect of our history left untouched by women—from the first published American poet, Anne Bradstreet; to Sacajawea, Lewis and Clark's interpreter and guide; to Harriet Tubman, heroine of the Underground Railroad; to Margaret Mead, who revolutionized the study of anthropology. Writers and artists such as Laura Ingalls Wilder, Mary Cassatt, Beverly Sills, Amy Tan, and Martha Graham have captured our imaginations. Champions like Wilma Rudolph and Bonnie Blair have taken America to great heights in the international sports world.

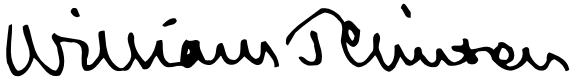
Today, women make up close to half of our Nation's labor force, and women-owned businesses are changing the face of the American and global economies. But barriers to equality remain. Despite the efforts of women like Esther Peterson, a leader in the effort to end gender-based salary differences, many women are still paid considerably less than their male counterparts. Often these women also struggle with the dual responsibilities of raising a family and meeting the demands of a full-time job.

Last September, thousands of women from around the globe met to discuss these issues at the United Nations Fourth World Conference on Women in Beijing, China, and to develop a Platform for Action. The resulting document represents a powerful consensus on the need to advance women's status by improving access to education, health care, jobs, and credit. It describes the fundamental desire of all women to enjoy basic legal and human rights and to take part in political life. Only through our commitment to these principles can we forever end discrimination and injustice based on gender, promote women's full participation in all aspects of American life, and join people everywhere who seek true equality.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 1996, as Women's History Month. I call upon Government officials, educators, and all Ameri-

cans to observe this month with appropriate programs, ceremonies, and activities; to remember year-round the many important contributions that women make to our country each day; and to learn and share information about women's history in homes, classrooms, and community centers across the Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of March, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twentieth.



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The rules and proposed rules in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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