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Presidential Documents

Title 3—

The President

Executive Order 12993 of March 21, 1996

Administrative Allegations Against Inspectors General

Certain executive branch agencies are authorized to conduct investigations of allegations of wrongdoing by employees of the Federal Government. For certain administrative allegations against Inspectors General (''IGs'') and, as explained below, against certain staff members of the Offices of Inspectors General (''OIGs''), it is desirable to authorize an independent investigative mechanism.

The Chairperson of the President's Council on Integrity and Efficiency (''PCIE'') and the Executive Council on Integrity and Efficiency (''ECIE''), in consultation with members of the Councils, has established an Integrity Committee pursuant to the authority granted by Executive Order No. 12805.

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to ensure that administrative allegations against IGs and certain staff members of the OIGs are appropriately and expeditiously investigated and resolved, it is hereby ordered as follows:

Section 1. *The Integrity Committee.* (a) To the extent permitted by law, and in accordance with this order, the Integrity Committee shall receive, review, and refer for investigation allegations of wrongdoing against IGs and certain staff members of the OIGs.

(b) The Integrity Committee shall consist of at least the following members:

(1) The official of the Federal Bureau of Investigation (''FBI'') serving on the PCIE, as designated by the Director of the FBI. The FBI member shall serve as Chair of the Integrity Committee.

(2) The Special Counsel of the Office of Special Counsel;

(3) The Director of the Office of Government Ethics;

(4) Three or more IGs, representing both the PCIE and the ECIE, appointed by the Chairperson of the PCIE/ECIE.

(c) The Chief of the Public Integrity Section of the Criminal Division of the Department of Justice, or his designee, shall serve as an advisor to the Integrity Committee with respect to its responsibilities and functions in accordance with this order.

Sec. 2. *Referral of Allegations.* (a) The Integrity Committee shall review all allegations of wrongdoing it receives against an IG who is a member of the PCIE or ECIE, or against a staff member of an OIG acting with the knowledge of the IG or when the allegation against the staff person is related to an allegation against the IG, except that where an allegation concerns a member of the Integrity Committee, that member shall recuse himself from consideration of the matter.

(b) An IG shall refer any administrative allegation against a senior staff member to the Integrity Committee when:

(1) review of the substance of the allegation cannot be assigned to an agency of the executive branch with appropriate jurisdiction over the matter; and

(2) the IG determines that an objective internal investigation of the allegation, or the appearance thereof, is not feasible.

(c) The Integrity Committee shall determine if there is a substantial likelihood that the allegation, referred to it under paragraphs (a) or (b) of this section, discloses a violation of any law, rule or regulation, or gross mismanagement, gross waste of funds or abuse of authority and shall refer the allegation to the agency of the executive branch with appropriate jurisdiction over the matter. However, if a potentially meritorious administrative allegation cannot be referred to an agency of the executive branch with appropriate jurisdiction over the matter, the Integrity Committee shall certify the matter to its Chair, who shall cause a thorough and timely investigation of the allegation to be conducted in accordance with this order.

(d) If the Integrity Committee determines that an allegation does not warrant further action, it shall close the matter without referral for investigation and notify the Chairperson of the PCIE/ECIE of its determination.

Sec. 3. *Authority to Investigate.* (a) The Director of the FBI, through his designee serving as Chairperson of the Integrity Committee, is authorized and directed to consider and, where appropriate, to investigate administrative allegations against the IGs and, in limited cases as described in sections 2(a) and 2(b) above, against other staff members of the OIGs, when such allegations cannot be assigned to another agency of the executive branch and are referred by the Integrity Committee pursuant to section 2(c) of this order.

(b) At the request of the Director of the FBI, through his designee serving as Chairperson, heads of agencies and entities represented in the PCIE and ECIE may, to the extent permitted by law, provide resources necessary to the Integrity Committee. Employees from those agencies and entities will be detailed to the Integrity Committee, subject to the control and direction of the Chairperson, to conduct an investigation pursuant to section 2(c): *Provided,* that such agencies or entities shall be reimbursed by the agency or entity employing the subject of the investigation. Reimbursement for any costs associated with the detail shall be consistent with applicable law, including but not limited to the Economy Act (31 U.S.C. 1535 and 1536), and subject to the availability of funds.

(c) Nothing in the above delegation shall augment, diminish, or otherwise modify any existing responsibilities and authorities of any other executive branch agency.

Sec. 4. *Results of Investigation.* (a) The report containing the results of the investigation conducted under the supervision of the Chair of the Integrity Committee shall be provided to the members of the Integrity Committee for consideration.

(b) With respect to those matters where the Integrity Committee has referred an administrative allegation to an agency of the executive branch with appropriate jurisdiction over the matter, the head of that agency shall provide a report to the Integrity Committee concerning the scope and results of the inquiry.

(c) The Integrity Committee shall assess the report received under (a) or (b) of this section and determine whether the results require forwarding of the report, with Integrity Committee recommendations, to the Chairperson of the PCIE/ECIE for resolution. If the Integrity Committee determines that the report requires no further referral or recommendations, it shall so notify the Chairperson of the PCIE/ECIE.

(d) Where the Chairperson of the PCIE/ECIE determines that dissemination of the report to the head of the subject's employing agency or entity is appropriate, the head of the agency or entity shall certify to the Chairperson of the PCIE/ECIE within sixty 60 days that he has personally reviewed the report, what action, if any, has been or is to be taken, and when any action taken will be completed. The PCIE/ECIE Chairperson may grant the head of the entity or agency a 30-day extension when circumstances necessitate such extension.

(e) The Chairperson of the PCIE/ECIE shall report to the Integrity Committee the final disposition of the matter, including what action, if any, has been

or is to be taken by the head of the subject's employing agency or entity. When the Integrity Committee receives notice of the final disposition, it shall advise the subject of the investigation that the matter referred to the Integrity Committee for review has been closed.

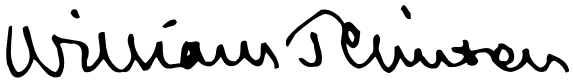
Sec. 5. *Procedures.* (a) The Integrity Committee, in conjunction with the Chairperson of the PCIE/ECIE, shall establish the policies and procedures necessary to ensure consistency in conducting investigations and reporting activities under this order.

(b) Such policies and procedures shall specify the circumstances under which the Integrity Committee, upon review of a complaint containing allegations of wrongdoing, may determine that an allegation is without merit and therefore the investigation is unwarranted. A determination by the Integrity Committee that an investigation is unwarranted shall be considered the Integrity Committee's final disposition of the complaint.

(c) The policies and procedures may be expanded to encompass other issues related to the handling of allegations against IGs and others covered by this order.

Sec. 6. *Records Maintenance.* All records created and received pursuant to this order are records of the Integrity Committee and shall be maintained by the FBI.

Sec. 7. *Judicial Review.* This order is intended only to improve the internal management of the executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.



THE WHITE HOUSE,
March 21, 1996.

[FR Doc. 96–7460
Filed 3–25–96; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 12994 of March 21, 1996

Continuing the President's Committee on Mental Retardation and Broadening Its Membership and Responsibilities

The President's Committee on Mental Retardation, established by Executive Order No. 11280 on May 11, 1966, as superseded by Executive Order No. 11776 on March 28, 1974, has organized national planning, stimulated development of plans, policies and programs, and advanced the concept of community participation in the field of mental retardation.

National goals have been established to:

(1) promote full participation of people with mental retardation in their communities;

(2) provide all necessary supports to people with mental retardation and their families for such participation;

(3) reduce the occurrence and severity of mental retardation by one-half by the year 2010;

(4) assure the full citizenship rights of all people with mental retardation, including those rights secured by such landmark statutes as the Americans with Disabilities Act of 1990, Public Law 101-336 (42 U.S.C. 12101 *et seq.*);

(5) recognize the right of all people with mental retardation to self-determination and autonomy, to be treated in a nondiscriminatory manner, and to exercise meaningful choice, with whatever supports are necessary to effectuate these rights;

(6) recognize the right of all people with mental retardation to enjoy a quality of life that promotes independence, self-determination, and participation as productive members of society; and

(7) promote the widest possible dissemination of information on models, programs, and services in the field of mental retardation.

The achievement of these goals will require the most effective possible use of public and private resources.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2), it is hereby ordered as follows:

Section 1. *Committee Continued and Responsibilities Expanded.* The President's Committee on Mental Retardation (the ''Committee''), with expanded membership and expanded responsibilities, is hereby continued in operation.

Sec. 2. *Composition of Committee.* (a) The Committee shall be composed of the following members:

(1) The Secretary of Health and Human Services;

(2) The Secretary of Education;

(3) The Attorney General;

(4) The Secretary of Labor;

(5) The Secretary of Housing and Urban Development;

(6) The Chief Executive Officer of the Corporation for National and Community Service (formerly ACTION);

(7) The Commissioner of Social Security;

(8) The Chair of the Equal Employment Opportunity Commission;

(9) The Chairperson of the National Council on Disability;

(10) No more than 21 other members who shall be appointed to the Committee by the President. These citizen members shall consist of individuals who represent a broad spectrum of perspectives, experience, and expertise on mental retardation, and shall include self-advocates with mental retardation and members of families with a child or adult with mental retardation, and persons employed in either the public or the private sector. Except as the President may from time to time otherwise direct, appointees under this paragraph shall have two-year terms, except that an appointment made to fill a vacancy occurring before the expiration of a term shall be made for the balance of the unexpired term.

(b) The President shall designate the Chair of the Committee from the 21 citizen members. The Chair shall advise and counsel the Committee and represent the Committee on appropriate occasions.

Sec. 3. *Functions of the Committee.* (a) The Committee shall provide such advice and assistance in the area of mental retardation as the President or Secretary of Health and Human Services may request, and particularly shall advise with respect to the following areas:

(1) evaluating and monitoring the national efforts to establish appropriate policies and supports for people with mental retardation;

(2) providing suggestions for improvement in the delivery of mental retardation services, including preventive services, the promulgation of effective and humane policies, and the provision of necessary supports;

(3) identifying the extent to which various Federal and State programs achieve the national goals in mental retardation described in the preamble to this order and have a positive impact on the lives of people with mental retardation;

(4) facilitating liaison among Federal, State, and local governments, foundations, nonprofit organizations, other private organizations, and citizens concerning mental retardation;

(5) developing and disseminating such information as will tend to reduce the incidence and severity of mental retardation; and

(6) promoting the concept of community participation and development of community supports for citizens with mental retardation.

(b) The Committee shall make an annual report, through the Secretary of Health and Human Services, to the President concerning mental retardation. Such additional reports may be made as the President may require or as the Committee may deem appropriate.

Sec. 4. *Cooperation by Other Agencies.* To assist the Committee in providing advice to the President, Federal departments and agencies requested to do so by the Committee shall designate liaison officers to the Committee. Such officers shall, on request by the Committee, and to the extent permitted by law, provide the Committee with information on department and agency programs that do contribute to or could contribute to achievement of the President's goals in the field of mental retardation.

Sec. 5. *Administration.* (a) The Department of Health and Human Services shall, to the extent permitted by law, provide the Committee with necessary staff, administrative services, and facilities and funding.

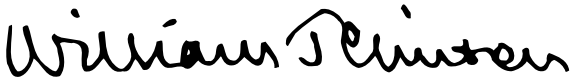
(b) Each member of the Committee, except any member who receives other compensation from the United States Government, may receive compensation for each day he or she is engaged in the work of the Committee, as authorized by law (5 U.S.C. 3109), and may also receive travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5701-5707), for persons employed intermittently in the Government service.

Committee members with disabilities may be compensated for attendant expenses, consistent with Government procedures and practices.

(c) The Secretary of Health and Human Services shall perform such other functions with respect to the Committee as may be required by the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2), except that of reporting to the Congress.

Sec. 6. *Construction.* Nothing in this order shall be construed as subjecting any Federal agency, or any function vested by law in, or assigned pursuant to law to, any Federal agency, to the authority of the Committee or as abrogating or restricting any such function in any manner.

Sec. 7. *Superseded Authority.* Executive Order No. 11776 is hereby superseded.



THE WHITE HOUSE,
March 21, 1996.

[FR Doc. 96–7461
Filed 3–25–96; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 61, No. 59
Tuesday, March 26, 1996

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

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

APPALACHIAN REGIONAL COMMISSION

5 CFR Part 1900

Repeal of Employee Responsibilities and Conduct Regulations for Appalachian Regional Commission Federal Employees (Federal Staff); Correction

AGENCY: Appalachian Regional Commission.

ACTION: Final rule; correction.

SUMMARY: The Appalachian Regional Commission is correcting one erroneous citation in its employee responsibilities and conduct regulation published on December 7, 1995.

EFFECTIVE DATE: This final rule is effective March 26, 1996.

FOR FURTHER INFORMATION CONTACT: Guy Paul Land, Counsel to the Federal Co-Chairman, Appalachian Regional Commission, 1666 Connecticut Avenue NW., Washington, D.C. 20235, 202–884–7660.

SUPPLEMENTARY INFORMATION: The Appalachian Regional Commission is correcting one erroneous citation to the Office of Government Ethics (OGE) executive branchwide standards of ethical conduct regulation which appeared in the ARC's revision to 5 CFR Part 1900, published in the Federal Register of Thursday, December 7, 1995, on page 62702. The OGE executive branchwide standards of ethical conduct regulation was erroneously cited as codified at CFR Part 3635. This final rule corrects that citation to read 5 CFR Part 2635.

Administrative Procedure Act

Pursuant to 5 U.S.C 553(b), the Appalachian Regional Commission finds good cause exists for waiving the general notice of proposed rulemaking as to this final rule. The notice is being waived because this rulemaking relating to ARC Federal employees concerns matters of agency organization, practice and procedure. Further, it is in the public interest that the citation be corrected as soon as possible.

Executive Order 12866

In promulgating this final regulation, the Appalachian Regional Commission has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This final rule has not been reviewed by the Office of Management and Budget under that Executive order, since it deals with agency organization, management, and personnel matters and is not in any event deemed ''significant'' thereunder.

Regulatory Flexibility Act

The Appalachian Regional Commission has determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant impact on small business entities because it affects only ARC Federal employees.

Paperwork Reduction Act

The Appalachian Regional Commission has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 1900

Conflict of interest, Government employees.

Approved: February 29, 1996.

Jesse L. White, Jr.,

Federal Co-Chairman, Appalachian Regional Commission.

For the reasons set forth in the preamble, the final rule published on December 7, 1995 (60 FR 62702) is corrected as follows:

§ 1900.100 [Corrected]

On page 62702, in the third column, in § 1900.100, ''5 CFR part 3635'' is corrected to read ''5 CFR part 2635''.

[FR Doc. 96–6607 Filed 3–25–96; 8:45 am]

BILLING CODE 6130–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 944, 980 and 999

[Docket Nos. FV93–944–3FIR, FV93–980–1FIR and FV93–999–1FIR]

Exemptions From Import Regulations for Specified Fruit, Vegetable and Specialty Crop Commodities

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule finalizes, with modifications, two interim final rules which exempt imported fresh fruit, vegetable and specialty crop commodities from grade, size, quality, and maturity requirements if those commodities are to be used in certain specified outlets. The exemptions correspond to exemptions in effect for the same commodities regulated under Federal marketing orders. This rule also finalizes, with modifications, safeguard procedures which were added to import regulations to assure that imported fresh commodities are utilized only in such specified exempt outlets. This rule also deletes import requirements for Tokay grapes. This rule is implemented in accordance with section 8e of the Agricultural Marketing Agreement Act of 1937 to make the import regulations more consistent with applicable domestic marketing order exemptions and with the North American Free Trade Agreement (NAFTA). Exempt uses include, but are not limited to, processing, livestock feed, and donation to charity.

EFFECTIVE DATE: May 28, 1996.

FOR FURTHER INFORMATION CONTACT: Barbara Schulke or Bill Addington, telephone (202) 720–4607 and (202) 720–2412 respectively, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, Fax (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (Act), which provides that whenever certain specified commodities, including avocados, grapefruit, kiwifruit, limes, olives, oranges, table grapes, potatoes, onions, tomatoes, dates

and walnuts, are regulated under a Federal marketing order, imports of those commodities must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodities.

The Act further provides that when two or more marketing orders for the same commodity produced in different areas are in effect, the imported commodity must meet the same grade, size, quality, and maturity requirements as the commodity produced in the area with which the imported commodity is in most direct competition.

Some marketing orders provide exemptions for commodities sold at roadside stands, shipped directly to consumers, or exported. However, such exemptions are not issued for commodities offered for importation because such outlets are not applicable to import regulations.

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

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

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

The following are updated estimates of the number of importers who may be affected by this final rule: avocados—147, grapefruit—96, kiwifruit—110, limes—147, olives—15, oranges—96, table grapes—80, potatoes—74, onions—148, tomatoes—142, dates—164, and walnuts—6. Small agricultural service firms, which include importers and processors of these commodities, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5 million. The majority of these importers may be classified as small entities.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule 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 the provisions of this rule.

In accordance with section 8e, imported commodities destined for processing must be given the same or comparable treatment as that afforded domestic commodities destined for processing. The Federal marketing orders covering avocados, grapefruit, kiwifruit, limes, olives, oranges, table grapes, potatoes, onions and tomatoes provide exemptions from established quality and size requirements if the commodity is to be used in certain processing outlets. This final rule provides similar exemptions for imported products destined for processing.

Marketing Order No. 926 regulating Tokay Grapes Grown in San Joaquin County, California, has been terminated by the Department at the request of the order's Industry Committee. Thus, the import requirements for Tokay grapes established under section 8e of the Act are also terminated. This final rule removes all references to Tokay grapes that appeared in the interim final rule (58 FR 69182).

This rule finalizes exemptions for imported commodities to be utilized in other exempt outlets. These exemptions are consistent with section 8e of the Act which requires imported commodities to meet the same or comparable requirements established under the domestic marketing orders for the commodities. This rule finalizes, with modifications, amendments to the following 7 CFR sections:

944.28 Avocado import grade regulation,
944.31 Avocado import maturity regulation,
944.106 Grapefruit import regulation,
944.209 Lime import regulation,
944.312 Orange import regulation,
944.401 Olive regulation,
944.503 Table grape import regulation,
944.550 Kiwifruit import regulation,
980.1 Import regulations; Irish potatoes,
980.117 Import regulations; onions,
980.212 Import regulations; tomatoes,
999.1 Regulation governing the importation of dates, and
999.100 Regulation governing imports of walnuts.

Safeguard provisions, added by the interim final rules as §§ 944.350, 980.501, and 999.500, are modified in this final rule to provide that imported commodities not meeting grade, size, quality, and maturity requirements can be utilized in specified exempt outlets.

The two interim final rules were issued on December 23, 1993, and published in the Federal Register (58 FR 69182 and 69186, December 30, 1993) with an effective date of January 1, 1994. The two rules amended 7 CFR parts 944, 980 and 999 and provided a two-month comment period which ended February 28, 1994. A minor correction to part 944 was issued on January 31, 1994 (59 FR 4245). At the request of industry members, the Department reopened the comment period for one additional month (59 FR 11529, March 11, 1994) for both interim final rules. The reopened comment period closed April 11, 1994.

Thirty five comments were received. Thirty four comments opposed various aspects of the two interim final rules and one comment favored the interim final rules. The primary concern of most commenters was the use of exemptions by processors. Thirty comments were from members of, or on behalf of, the potato, onion and tomato industries in the United States. The one favorable comment was received from the Canadian Produce Marketing Association.

Several commenters questioned the Department's commitment to the safeguard program. They claimed that there is no plan to monitor exempt shipments and that the AMS lacks personnel to enforce compliance of the program.

The AMS is responsible for administering Federal fruit, vegetable, and specialty crop marketing order programs and the corresponding import regulations. A number of different resources are being utilized to implement and monitor the safeguard program, including the Fruit and Vegetable Division's (Division) Marketing Order Administration Branch (MOAB) (which monitors exempt entries), the inspection services of Fresh Products Branch and Processed Products Branch and the AMS Compliance Staff. The Department's Animal and Plant Health Inspection Service (APHIS), and the U.S. Customs Service (Customs Service) also must review and clear all agricultural shipments prior to entry into the United States. This rule does not supersede the Federal Plant Quarantine Act of 1912, the Federal Food, Drug, and Cosmetic Act, or any other applicable laws or food and sanitary regulations of city, county, state or Federal agencies.

Every attempt is made to keep importers, known processors, and other exempt receivers aware of these rules and the safeguard procedures. The interim final rules, exemption forms and updated import summary sheets for the affected commodities have been sent to all known importers and processors.

Additional exemption forms are sent immediately upon request.

A compliance plan has been developed utilizing follow-up telephone calls and spot compliance checks of exempt outlets. Division personnel currently make telephone calls to importers and customs brokers who initiate the FV–6 ''Importer's Exempt Commodity Form'' (FV–6 or FV–6 forms) and calls to exempt receivers who must certify receipt and disposition of the exempt shipments. The FV–6 was established under the interim final rule as an integral part of the safeguard reporting procedures. This final rule modifies the FV–6 (below).

Experience over the last year indicates that the notification process outlined in the interim final rules (58 FR pages 69182 and 69186, December 30, 1993) should be modified to ensure that the Department is aware of all shipments entered as exempt under 8e provisions. Under a Memorandum of Understanding between the AMS and the Customs Service, AMS will be provided import data on all entries of 8e commodities. The MOAB has worked with the fresh and processed products inspection offices and the Customs Service to coordinate efforts for an effective 8e compliance program. In addition, MOAB maintains an extensive and comprehensive list of importers, customs brokers and receivers for mailing and field audits. Division representatives attend regional and national importers and customs brokers meetings to educate importers and Customs Service officials on the requirements of the Act. MOAB enters and reconciles data from the FV–6 forms, Customs Service data, and the inspection service offices, and the PIERS report (Port, Import/Export Reporting Service) to identify lots which enter ports under the exemption rule.

Some commenters asked what penalties would be applied to those who violate the safeguard procedures. The compliance plan provides for on-the-spot inspections and checks of processors and other exempt outlet receivers to gather evidence of violations. Pursuant to section 8e of the Act, the Department can bring legal action against those who violate import regulations. Penalties may be assessed under section 608a(5). Upon conviction, penalties as prescribed in 608c(14)(A) also may be imposed. Section (14)(A) provides for fines from $50 to $5,000 per violation, per day, for those convicted of violating regulations, including import regulations. In addition, section 608c(14)(B) provides for administrative adjudication to issue civil penalties of up to $1,000 per day, per violation, against importers and exempt receivers who violate the import regulations, including safeguard procedures.

Further, using Customs Service regulatory authorities (19 CFR part 113), the AMS can also request the Customs Service to demand redelivery of a lot imported as exempt under section 8e if certification of exempt use has not been received by the AMS. Failure to redeliver the lot is punishable by a penalty of three times the value of the shipment. The AMS is developing a computerized data base to identify exempt shipments for which the reporting process has not been completed within specified time frames. This rule does not supersede or replace Customs Service entry procedures.

A few commenters, evidently referring to the $1,000 fine cited on the exemption form, stated that $1,000 is not a sufficient deterrent to prevent some from violating the safeguard procedures. However, the $1,000 fine is for making false statements on the form. False representation to any Federal agency on any matter within its jurisdiction, knowing it to be false, is a criminal offense and a violation of 18 U.S.C. 1001 which provides for a fine or imprisonment or both.

The Department is fully committed to enforcing the import regulations.

Most of the commenters questioned whether the safeguard procedures would prevent substandard product from entering fresh marketing channels. With modifications implemented in this final rule, the Department believes that the enhanced safeguard procedures represent practicable, aggressive, and effective procedures for monitoring exempt shipments. In addition, the management staffs of many marketing orders follow similar procedures in monitoring and enforcing special purpose shipment provisions relating to their respective commodities.

A few commenters suggested that the marketing order committees should be allowed to assist the Department with enforcement activities. The Department is responsible for enforcing import regulations and cannot delegate that compliance activity to committee managers. However, the Department encourages managers to notify the AMS of suspected violations of safeguard procedures or improper dispositions.

A few commenters contended that the reporting deadlines (15 days at the port of entry and 15 days after receipt by the exempt receiver) are too long for the Department to effectively monitor the disposition of lots. They stated that during the 15-day reporting period an exempt lot could easily be disposed of in fresh market channels and there would be no proof of such illegal activity. The Department agrees that a more timely notification of the release of exempt lots into the United States will enhance the Department's ability to enforce the safeguard procedures and ensure compliance with the import regulations. The time period should be short enough to enable the Department, when conducting on-site inspection of receivers' facilities, to determine ultimate disposition of exempt lots. The Department believes that a two-day reporting period will be sufficient for mailing reports of entry and exempt disposition. Thus, this final rule establishes that original copies of FV–6 forms must be submitted by importers, customs brokers, and exempt receivers, and such copies must be postmarked no later than two days after importation or receipt of the commodity shipment being reported. FV–6 forms must be mailed to the Marketing Order Administration Branch, USDA, AMS, P.O. Box 96456, room 2523–S, Washington, D.C. 20090–6456 (telephone (202) 720–4607. FV–6 forms submitted by fax must be followed by a mailed, original copy of the FV–6. Fax transmissions may be sent to the MOAB at (202) 720–5698.

One commenter suggested that the Act should be changed to allow for regulation of processors. Amendment of the Act would require Congressional action. In any event, the Food and Drug Administration of the Department of Health and Human Services is responsible for regulating the wholesomeness of processed peanut products.

One commenter claimed that the Department has reversed its long-standing position that section 8e requirements cannot be applied to pack and container requirements. However, section 8e of the Act states that imported commodities must meet the grade, size, quality and maturity requirements established under respective marketing orders. Because section 8e does not authorize pack and container requirements, those requirements cannot be applied to imported commodities. The Department has not changed its position on this issue.

Some commenters claimed that the exemptions for processing make it easier for imported culls to be used in local processing markets than domestic culls and that this would have a negative impact on economically depressed production areas that utilize domestically produced culls in processing. However, the objective of this rule is that section 8e import

regulations and the exemption provisions of domestic marketing orders be the same or comparable. An importer who properly files FV–6 forms when using imported culls in processing outlets does not violate the import regulation.

A few commenters stated that import barriers still exist in some countries and that the import exemption rule gives unfair advantage to foreign producers. However, the efficacy of this rule in the United States is not dependent on the absence of trade barriers in other countries. The exemption form may be used for exempt commodities imported from any country. The interim final rules were issued to be consistent with section 8e of the Act, and thus, may be applied to the specified commodities imported from any country.

One commenter, referring to Section A of Annex 703.2 of the NAFTA, stated that the Department ''went beyond the specific requirements of the NAFTA by applying the rule to Canada.'' The Department did not intend to imply that Section A of Annex 703.2 applies to Mexico, Canada and other countries. Implementation of the NAFTA caused the Department to review all 8e provisions applicable to fruits and vegetables. After such review it became apparent that the regulations concerning the 8e commodities covered in this regulation needed to be amended to be consistent with marketing order regulations and requirements, as well as the NAFTA. Therefore, pursuant to Section 8e of the Act and the provisions of the NAFTA, the Department amended its regulations relating to these commodities.

One commenter suggested that new food technologies now tend to blur the distinction between fresh and ''fresh processed'' activities. To assist the importer or customs broker, specific processes that qualify for exemption are added to the regulatory text (e.g. canning, freezing, dehydrating, etc.) as appropriate for individual commodities. The listing of qualified processes for each commodity should assist importers and customs brokers in determining whether the process designated on the exemption form is considered to be an exempt process. The entries may be updated by future rulemaking, as necessary.

Several commenters suggested that the Department establish a ''pre-approved processor'' list for each commodity covered in parts 944, 980 and 999. According to the comments, a pre-approved processor list would contain the names of processor companies that have certified to the respective marketing order committee and to the Department that the processor agrees to dispose of exempt shipments only in approved processing operations. Commenters suggested that such lists be used to approve or reject exempt shipments at the port of entry, depending on whether the processor is on the approved list. Commenters suggested that the approval be granted either by the Customs Service, the respective marketing order committee manager, or the Department. However, the Customs Service cannot be expected to maintain a list of approved processors and to refer to it every time an exempt shipment is presented for importation. Oversight of import regulations cannot be delegated to marketing order managers. In response to comments, however, MOAB has obtained approved-processor lists for some commodity committees and is referring to the lists as part of MOAB's compliance procedures when reviewing FV–6 forms.

Some commenters cited phytosanitary concerns in opposing the import exemptions. The commenters believe that exempt shipments would enter the United States and not be subject to APHIS regulations or inspection. However, exempt shipments, including culls removed from reconditioned fresh shipments, continue to be subject to APHIS inspection and certification.

Several commenters complained that the rulemaking procedure used by the Department to issue the two interim final rules was abbreviated and did not provide for adequate industry input. The interim final rules were issued under informal rulemaking procedures used by the Department to implement regulations, and there was good cause not to postpone the effective date of the rule. More than three months were provided for comment on the two interim final rules. The lengthy comment period allowed interested persons time to comment on the interim final rules and also provided the Department with more opportunity to monitor and evaluate the safeguard procedures in operation.

Finally, customs brokers complained that they have no control over the ultimate disposition of exempt lots and, thus, should not be expected to certify as to the ultimate disposition of the lot. However, certification by either the importer or customs broker is needed to provide some validity to the safeguard procedure. Importers and customs brokers are responsible for seeking out and representing clients who will act in accordance with law. If a customs broker cannot, in good faith, certify as to the eventual exempt usage, then that person should not act as the agent of the importer.

On the basis of comments received, review of ongoing safeguard procedures, and review of the exemption form, the Department clarifies and modifies some requirements and procedures specified on the FV–6 form. These clarifications and modifications are intended to eliminate confusion when completing the exemption form, improve the functioning of the safeguard process, and improve the compliance capability of the Department.

This final rule establishes that the FV–6, Importer's Exempt Commodity Form will be sequentially numbered. Sequentially numbered forms will enable the Department to better monitor use of the form by importers and brokers and enhance compliance efforts by the Department. The new forms will be mailed to all known importers, customs brokers and inspection service offices serving major ports of entry. Use of the new forms must begin no later than 60 days after publication of this final rule in the Federal Register. During unforeseen or emergency situations, a special, sequentially numbered FV–6 form can be faxed to an importer or customs broker for one-time use. Additional copies of the new FV–6 form and single use copies are available on request by calling (202) 720–6585 or sending a fax to (202) 720–5698.

Under initial instructions, the white copy (#1) was to be retained by the Customs Service office at the port of entry upon entry. Under this final rule, the importer or customs broker must present the FV–6 to the Customs Service at the port of entry with Section I completed. The importer or customs broker then retains the white Copy 1 of the FV–6 as a record of the exempt entry. Further distribution of the form remains unchanged—the yellow Copy 2 is forwarded to the AMS and the pink Copy 3 is forwarded to the exempt outlet receiver with the exempt shipment.

The FV–6 is used when an entire lot (in bags or bulk) is imported exempt from quality requirements and shipped directly to an exempt outlet. An importer or customs broker usually arranges or facilitates the business transaction between a foreign producer (seller) and the domestic processor or other exempt entity. In these instances, the importer or customs broker is responsible for initiating the FV–6 form and the exempt user is the buyer.

An 8e commodity imported for fresh market use must be inspected and certified as meeting fresh market quality requirements. Prior to issuance of the two interim final rules in this

rulemaking procedure, if an imported 8e commodity shipment failed to meet applicable quality requirements, the importer had three options: (1) Export; (2) destroy the lot under inspection supervision; or (3) recondition the lot and return or destroy the culls. This rule provides another option for the importer. The FV–6 may be used to ship a failing lot, or the culls from a reconditioned lot, to an exempt outlet.

The ''Date and Place of Inspection'' entry (Item 2 on the FV–6 form) is to be completed only when a lot imported for fresh market use is inspected and all or a portion of the lot is subsequently sent to an exempt outlet. Item 2 would include the fresh inspection certificate number of the inspection performed on the lot. Some importers and customs brokers have not completed item 2 with this information or provided a copy of the inspection certificate when using the FV–6 form to import a lot failing fresh market quality requirements. In addition to filing an FV–6 form, the importer should also file a copy of the inspection certificate applicable to the exempt lot.

One FV–6 may be used for multiple deliveries to the same exempt outlet, if the deliveries are made at the same time. In such instances, item 4, ''Vehicle Identification,'' on the FV–6 must contain the license tag numbers or other identification for each vehicle delivering the exempt shipments. Also, item 7, ''Total Quantity Imported,'' must show the total weight of all loads delivered from the imported lot to the exempt outlet. The receiver who signs Section II of the exemption form for the exempt outlet certifies as to the receipt of all loads listed on the FV–6, the total volume received, and that the disposition is consistent with exempt usage.

If a shipment is entered as exempt and shipped to two or more exempt outlets, an FV–6 must be completed for each exempt shipment and outlet. Each receiver who signs section II of the exemption form for an exempt outlet is certifying receipt of the shipment at that exempt outlet. In such cases, the combined volume of exempt shipments to each outlet must equal the total volume reported on the exemption form.

The quality of product shipped exempt is a business decision between the exporter, importer and processor or other exempt receiver. If an importer or processor receives exempt product below needed quality specifications, the importer or processor could discontinue use of the exemption form and require that further shipments be inspected against applicable import grade, size, quality, or maturity requirements.

An exempt receiver may reject a shipment, send it to an alternate exempt outlet, destroy it, return it to the importer, or export it. It is the responsibility of the importer to notify the MOAB of any such action and final disposition of the shipment. In such cases, a second exemption form must be completed in full and filed with the MOAB. The second FV–6 should be initiated by the exempt receiver and certified by a representative of the alternate exempt outlet or disposition outlet. If the shipment is exported, a copy of the Customs Service export document should be included with the second FV–6.

Under ''Total Quantity Imported'' (currently item 7), the importer or customs broker must enter, in pounds, the quantity of product being imported as exempt. Other terms of measurement common in some countries or commodity industries, such as kilograms, basket, container, or bulk, must be converted to pounds. This will provide the receiving exempt outlet with a common, measurable term on which to determine that all of the product has been delivered. The conversion to pounds will also assist the Department in its compliance efforts. The weight entered should be only the quantity imported as exempt. In instances where the exempt commodity is the culled sublot of a larger fresh market lot, the weight entered should be only the weight of the exempt sublot.

Under ''Intended Use'' (currently item 9) the importer or customs broker should enter the type of processing use or other exempt use for which the exempt product is intended. The type of processing should be entered on the line after the word ''Type'' in item 9. This change is made at the request of commenters and is a modification from the interim final rules which did not require designation of the type of processing or other exempt use. This modification of the form will help the Department monitor exempt shipments.

The Customs Service Entry Number (currently item 10a) and the Harmonized Tariff Code Number (currently item 10b) must be entered on each exemption form. These data enable the Department to obtain a baseline of exempt shipments released by the Customs Service and, thus, are essential to the Department's monitoring and compliance responsibilities.

After consideration of comments received and evaluation of safeguard procedures, the Department finalizes the two interim final rules and makes minor modifications and additions to individual commodity import regulations for consistency and clarity. Discussions regarding fruit crop import regulations under 7 CFR part 944 follow.

Avocados

The avocado import grade regulation (7 CFR 944.28) is based on those in effect for avocados grown in Florida under Marketing Order No. 915 throughout the year. Under Marketing Order No. 915 any person may handle avocados without regard to established grade, size, quality, or maturity requirements provided that such avocados are handled for (1) consumption by charitable institutions; (2) distribution by relief agencies; (3) commercial processing into products; (4) seed; or (5) individual shipments of up to 55 pounds. Prior to issuance of the interim final rule, the only exemption allowed under the avocado import regulation was for individual shipments of up to 55 pounds. This rule finalizes the addition of charitable institutions, distribution by relief agencies, seed, and commercial processing into products to the list of exemptions allowed under the avocado import regulation. Commercial processing includes canning, freezing, dehydrating, drying, the addition of chemical substances, or fermentation.

The Department suspended § 944.31 Avocado import maturity regulation on May 15, 1991 (56 FR 23009). The suspension was in place at the time of issuance of the import exemption interim final rule (58 FR 69182, December 23, 1993). Subsequently, the Department issued a proposed rule on April 4, 1994 (59 FR 15661) to lift the suspension. Because the avocado import maturity regulation was not in effect when the exemption interim final rule was issued, exemptions under § 944.31 were not included in the exemption interim final rule. However, a final rule removing the temporary suspension of avocado import maturity regulation was issued on June 16, 1994 (59 FR 30866). Because the exemptions for imported avocados under § 944.31 maturity regulations also apply to § 944.28 grade regulations, this rule finalizes the addition of charitable institutions, distribution by relief agencies, seed, and commercial processing into products to the list of exemptions allowed under the avocado import maturity regulation.

Grapefruit

The grapefruit import regulation (7 CFR 944.106) is based on those in effect for grapefruit grown in Florida under Marketing Order No. 905 throughout the year. Under Marketing Order No. 905, any person may handle grapefruit without regard to established grade, size, quality, or maturity requirements

provided that such grapefruit are handled for (1) consumption by charitable institutions; (2) distribution by relief agencies; (3) commercial processing into canned or frozen products or into a beverage base; (4) animal feed; or (5) individual shipments of up to 15 standard packed cartons (12 bushels). Prior to issuance of the interim final rule, the only exemption allowed under the grapefruit import regulation was that for individual shipments of up to 15 standard packed cartons (12 bushels). This rule finalizes the addition of charitable institutions, distribution by relief agencies, commercial processing into canned or frozen products or into a beverage base, and animal feed to the list of exemptions allowed under the grapefruit import regulation.

Limes

The lime import regulation (7 CFR 944.209) is based on those in effect for limes grown in Florida under Marketing Order No. 911 throughout the year. Under Marketing Order No. 911 any person may handle limes without regard to established grade, size, quality, or maturity requirements provided that such limes are handled for (1) consumption by charitable institutions; (2) distribution by relief agencies; (3) commercial processing into products; or (4) individual shipments of up to 55 pounds. Prior to issuance of the interim final rule, the only exemption allowed under the lime import regulation was that for individual shipments of up to 250 pounds. This rule finalizes the addition of charitable institutions, distribution by relief agencies, and commercial processing into products to the list of exemptions allowed under the lime import regulation. Commercial processing includes canning, freezing, dehydrating, drying, the addition of chemical substances, or fermentation. Limes imported for conversion into juice without further processing or preservative treatment are deemed fresh limes and may not be imported exempt from inspection requirements.

Oranges

The orange import regulation (7 CFR 944.312) is based on those in effect for oranges grown in Texas under Marketing Order No. 906 throughout the year. Under Marketing Order No. 906 any person may handle oranges without regard to established grade, size, quality, or maturity requirements provided that such oranges are handled for (1) consumption by charitable institutions; (2) distribution by relief agencies; (3) commercial processing into products; or (4) individual shipments of up to 400 pounds. Prior to issuance of the interim final rule, the only exemption allowed under the orange import regulation was that for individual shipments of up to ten 7/10 bushels (400 pounds). In addition, Marketing Order No. 906 requires handlers to certify to the order's committee that receiving processors have no facilities, equipment, or outlet to repack or sell fruit in fresh form (§ 906.123(b)(7)). This final rule adds a corresponding proviso to the orange import regulation that oranges, imported as exempt under this regulation, cannot be shipped to processors who have facilities, equipment, or outlets to repack or sell fruit in fresh form. This rule finalizes the addition of charitable institutions, distribution by relief agencies, and commercial processing into products to the list of exemptions allowed under the orange import regulation.

The minimum grade requirement for oranges under the orange import regulation (7 CFR 944.312) was suspended effective October 24, 1991 (56 FR 55983) but was not addressed in the interim final rule because the minimum grade requirement was not directly affected by the exemptions. That minimum grade requirement was reinstated on May 12, 1994 (59 FR 25791), at the same U.S. No. 2 grade that was effective for imported oranges prior to suspension in 1991. The reinstatement rule also amended the definition of the term ''oranges'' and changed the minimum quantity exemption from ''ten 7/10 bushels,'' which is the equivalent of 420 pounds, to 400 pounds. This final rule reflects the changes established in the reinstatement action.

Olives

The olive import regulation (7 CFR 944.401) is based on those in effect for olives grown in California under Marketing Order No. 932 throughout the year. Under Marketing Order No. 932 any person may handle olives without regard to established grade, size, quality, or maturity requirements provided that such olives are handled for processing into oil or donated to charitable institutions. Although there is no minimum quantity exemption for olives regulated under Marketing Order No. 932, an exemption is allowed under the olive import regulation for individual shipments up to 100 pounds. This rule finalizes the addition of processing into oil and donations to charitable institutions to the list of exemptions allowed under the olive import regulation.

This rule also replaces the original text in paragraph (c) of § 944.401 concerning procedures for importing olives and the Department offices contacted prior to importation. The interim final rule published December 30, 1993 (58 FR 69186) inadvertently omitted the procedures and offices specified in the latter portion of paragraph (c). This rule replaces, without change, the procedures to be followed and updates the office addresses and numbers to be contacted prior to importation.

Table Grapes

The table grape import regulation (7 CFR 944.506) is based on those in effect for table grapes grown in southeastern California under Marketing Order No. 925 from April 20 through August 15. Under Marketing Order No. 925 any person may handle table grapes without regard to established grade, size, quality, or maturity requirements provided that such table grapes are handled for processing into products. Currently, no imported shipments of table grapes are exempt from the import regulations. This rule finalizes the addition of processing into products as an exemption allowed under the table grape import regulation.

Kiwifruit

The kiwifruit import regulation (7 CFR 944.550) is based on those in effect for kiwifruit grown in California under Marketing Order No. 920 throughout the year. Under Marketing Order No. 920 any person may handle kiwifruit without regard to established grade, size, quality, or maturity requirements provided that such kiwifruit is handled for (1) Consumption by charitable institutions; (2) distribution by relief agencies; (3) commercial processing into products; or (4) individual shipments of up to 200 pounds. Prior to issuance of the interim final rule, the only exemption allowed under the kiwifruit import regulation was that for individual shipments of up to 200 pounds. This rule finalizes the addition of charitable institutions, distribution by relief agencies, and commercial processing into products to the list of exemptions allowed under the kiwifruit import regulation. For the purposes of this section, *commercial processing into products* means that the kiwifruit is physically altered in form or chemical composition through freezing, canning, dehydrating, pulping, juicing, or heating of the product. The act of slicing, dicing, or peeling shall not be considered commercial processing into products.

This rule also makes minor modifications to the section titles of some fruit crop import regulations. In the past, the Department issued separate, annual import regulations that

were sequentially numbered. However, the import regulations are now issued on a continuing basis and are amended only as necessary. The section number for each import regulation remains the same and, thus, the numerical designations at the end of the titles are no longer needed. Also, to be consistent with Federal Register guidelines, the titles are changed by removing the capitalization of some words. These changes have no material effect on the import regulations.

The following vegetable crop import regulations are covered under 7 CFR part 980.

Potatoes

The import grade regulation for potatoes (7 CFR 980.1) is based on marketing orders in effect for potatoes grown in five different potato production areas in Idaho and Oregon (MO 945), Washington (MO 946), Oregon-California (MO 947), Colorado (MO 948), and the Southeastern United States (MO 953). Under one or more of these orders, any person may handle potatoes exempt from established grade, size, quality, and maturity requirements, provided that such potatoes are used for (1) Processing, (2) livestock feed, (3) charity or relief, (4) certified seed, (5) export, or (6) limited quantity shipments ranging from 500 to 1,000 pounds, depending on the individual order. Processing includes canning, freezing, dehydration, chips, shoestrings, starch and flour. Processing does not include potatoes that are only peeled, or cooled, sliced, diced, or treated to prevent oxidation. The Department has determined that fresh use food service product, such as fresh use potato salad, is not processing. Potatoes made into canned product, such as canned potato salad, would be considered processing and thus, can be imported as exempt. Prior to issuance of the interim final rule, the potato import regulation provided exemptions only for certified seed and minimum quantity shipments of 500 pounds. This rule finalizes the addition of year-round exemptions, subject to certain safeguard provisions, for potatoes used for: (1) canning, freezing, or other processing, (2) livestock feed, and (3) charity or relief. The safeguard provisions are specified in § 980.501.

Onions

The import grade regulation for onions (7 CFR 980.117) is based on marketing orders in effect for onions grown in two different onion production areas in Idaho and Oregon (MO 958), and Texas (MO 959). Under one or both of these orders, any person may handle onions exempt from established grade, size, quality, and maturity requirements, provided that such onions are used for (1) processing, (2) livestock feed, (3) charity and relief, (4) plantings, or (5) limited quantity shipments ranging from 110 to 2,000 pounds, depending on the individual marketing order. Pearl onions not exceeding a maximum size may be imported exempt from all but size requirements. Inspection is required to determine that such onions do not exceed maximum size requirements. Processing includes canning, freezing, dehydration, extraction (juice) and pickling in brine. Processing does not include fresh chop, fresh cut, convenience food or other pre-packaged salad operations. Prior to issuance of the interim final rule, the onion import regulation provided exemptions for processed onions (dehydrated, canned, frozen and pickled in brine), green onions, onion sets (plantings), braided red onions, and for minimum quantity shipments of 110 pounds. This rule finalizes the addition of year-round exemptions, subject to certain safeguard provisions, for onions used for livestock feed, charity or relief, processing, and pearl onions. Marketing Order 958 exempts pearl onions which are smaller sized onions produced using specific cultural practices and are not larger than 1¾ inches in diameter. Because of the maximum size limitation, pearl onions imported exempt pursuant to these regulations must be inspected against the 1¾ inch diameter maximum size requirement prior to being released by the Customs Service. For clarity and consistency, this finalization also adds the size limit of pearl onions to the definition in paragraph (h), and other types of exempt onions to the definition for processing in paragraph (i). The safeguard provisions are specified in § 980.501.

Tomatoes

The import grade regulation for tomatoes (7 CFR 980.212) is based on the marketing order in effect for tomatoes grown in Florida (MO 966). Under that order, any person may handle tomatoes exempt from established grade, size, and maturity requirements, provided that such tomatoes are used for (1) processing, (2) charity, (3) relief, (4) export, (5) experimental purposes, (6) pear shaped (elongated), cherry, green house or hydroponic tomatoes, or (7) limited quantity shipments of 50 pounds per day. Prior to issuance of the interim final rule, the tomato import regulation provided exemptions for experimental purposes, shipments of 60 pounds, and pear shaped, cherry, hydroponic, and greenhouse tomatoes. This rule finalizes the addition of exemptions, subject to certain safeguard provisions, for tomatoes used for processing (canning and pickling), charity and relief. The safeguard provisions are specified in § 980.501.

The following specialty crop import regulations are covered under 7 CFR part 999.

Dates

The import regulation for dates (7 CFR 999.1) is based on the marketing order in effect for dates produced or packed in Riverside County, California (MO 987). Under that order, any person may handle dates exempt from established grade requirements, if such dates are donated to ''needy persons, prisoners, or Native Americans on reservations.'' Prior to issuance of the interim final rule, the date import regulation provided exemptions for: (1) processing (preparing and preserving dates into confection, coating to alter color, chopping, slicing or other processing which alters the form), (2) denatured dates unfit for human consumption, and (3) minimum quantity shipments which in the aggregate do not exceed 70 pounds. This rule finalizes the addition of exemptions, subject to certain safeguard provisions, for dates donated to charity, prisoners, and Native Americans on reservations. The safeguard provisions are specified in § 999.500.

Walnuts

The import grade regulation for walnuts (7 CFR 999.100) is based on the marketing order in effect for walnuts grown in California (MO 984). Under that order, any person may handle walnuts exempt from established grade and size requirements, if such walnuts are: (1) Green (immature), (2) used by charitable institutions, relief agencies or government agencies for school lunch programs, or diverted for animal feed, or oil manufacture, or other noncompetitive outlets. Prior to issuance of the interim final rule, the walnut import regulation provided exemptions from grade and size requirements for minimum quantity shipments of 60 pounds shelled or 115 pounds inshell. This rule finalizes the addition of exemptions, subject to certain safeguard provisions, for green walnuts, and walnuts for charity, relief, school lunch programs, animal feed or oil. The safeguard provisions are specified in § 999.500.

Raisins

Exemptions for raisin imports specified under current import

regulations for raisins (7 CFR part 999.300) are consistent with exemptions under the raisin marketing order and are not affected by this final rule.

Filberts

Exemptions for filbert imports specified under current import regulations for filberts (7 CFR part 999.400) are consistent with exemptions under the filbert/hazelnut marketing order and are not affected by this final rule.

Dried Prunes

Exemptions for dried prune imports specified under current import regulations for prunes (7 CFR part 999.200) are consistent with exemptions under the dried prune marketing order and are not affected by this final rule.

The respective marketing order committees have developed methods to monitor the marketing of the domestically produced exempt commodities from handlers to points of final disposition. Safeguard procedures in the form of reporting requirements and committee management oversight ensure that domestically produced commodities are used in the intended exempt outlets.

Safeguards in domestic marketing orders include two different procedures. A ''certificate of privilege'' is issued by a committee upon application by a handler. The handler notifies the appropriate marketing order committee of the handler's intent to ship that commodity to a processor, livestock feeder, charity, or other exempted outlet. A ''special purpose shipment report'' is forwarded by a handler to the receiver. The receiver sends the form to the responsible committee, providing information about the shipment necessary to determine compliance.

Because of the ease with which imported commodities can enter fresh market channels of trade, this rule modifies and finalizes a process to monitor exempt, imported commodities from the port of entry to the point of final disposition.

To provide consistency and ease the reporting burden on importers that deal in several commodities, this rule finalizes a single set of safeguard procedures and a standardized form that can be used for imported avocados, grapefruit, limes, oranges, olives, table grapes, kiwifruit, potatoes, onions, tomatoes, dates and walnuts. The procedure is added in §§ 944.350, 980.501 and 999.500, and is referenced in individual commodity import regulations.

Exemption forms may be obtained from the Marketing Order Administration Branch, USDA, AMS, P.O. Box 96456, room 2523–S, Washington, D.C. 20090–6456 (telephone (202)–720–4607, fax (202)–720–5698).

The exempt form must be mailed within two days of importation and two days of receipt at an exempt outlet. Original copies of the FV–6 must be submitted. Information required on the Importer's Exempt Commodity Form includes: (1) the commodity and the variety (if known) being imported, (2) the date and place of inspection if used to enter failing product or culls as exempt, (include a copy of the inspection certificate), (3) identifying marks or numbers on the containers, (4) identifying numbers on the railroad car, truck or other transportation vehicle transporting product to the receiver, (5) the name and address of the importer, (6) the place and date of entry, (7) the quantity imported (in pounds), (8) the name and address of the intended receiver (processor, feeder, charity, or other exempt receiver), (9) intended use of the exempt commodity, (10) the U.S. Customs Service entry number and harmonized tariff code number, and (11) such other information as may be necessary to ensure compliance with this regulation.

The reporting burden on both importers and receiving entities is minimal and consistent with safeguard procedures imposed on the handling of domestically-produced exempt commodities. In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information and collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0167.

This rule finalizes increases in the reporting burden on approximately 448 importers of avocados, grapefruit, limes, oranges, olives, table grapes, and kiwifruit and 534 importers of potatoes, onions, tomatoes, dates and walnuts who complete the exemption form. The estimated time for importers to complete the form is 10 minutes. The estimated time for receivers to sign the certification is 5 minutes.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

Based on the above, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

This final rule reflects the Department's appraisal of the need to relax the import requirements, with modification as hereinafter set forth, to comply with the terms of NAFTA and to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges

7 CFR Part 980

Food grades and standards, Imports, Marketing agreements, Onions, Potatoes, Tomatoes

7 CFR Part 999

Dates, Filberts, Food grades and standards, Imports, Nuts, Prunes, Raisins, Reporting and recordkeeping requirements, Walnuts.

Accordingly, the two interim final rules amending 7 CFR parts 944, 980 and 999 which were published at 58 FR 69182 and 69186 on December 30, 1993, are adopted as a final rule with the following changes:

PART 944—FRUITS; IMPORT REGULATIONS

1. The authority citation for 7 CFR part 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 944.31, paragraphs (f) and (g) are revised to read as follows:

§ 944.31 Avocado import maturity regulation.

* * * * *

(f) Any lot or portion thereof which fails to meet the import requirements, and is not being imported for purposes of consumption by charitable institutions, distribution by relief agencies, seed, or commercial processing into products; prior to or after reconditioning may be exported or disposed of under the supervision of the Federal or Federal-State Inspection Service with the costs of certifying the disposal of such lot borne by the importer.

(g) The maturity requirements of this section shall not be applicable to avocados imported for consumption by charitable institutions, distribution by relief agencies, seed, or commercial processing into products, but such avocados shall be subject to the safeguard provisions contained in § 944.350.

§ 944.209 [Amended]

3. In § 944.209, the last sentence in paragraph (c), the word ''handled'' is removed and the word ''imported'' is added in its place.

4. In § 944.312, paragraphs (c) and (h) are revised to read as follows:

§ 944.312 Orange import regulation.

* * * * *

(c) The term *importation* means release from custody of the United States Customs Service. The term *processing* means the manufacture of any orange product which has been converted into sectioned fruit or into fresh juice, or preserved by any commercial process, including canning, freezing, dehydrating, drying, and the addition of chemical substances, or by fermentation.

* * * * *

(h) The grade, size, quality, and maturity requirements of this section shall not be applicable to oranges imported for consumption by charitable institutions, distribution by relief agencies, or processing into products, but shall be subject to the safeguard provisions contained in § 944.350, *Provided that:* oranges, imported as exempt under this regulation, cannot be shipped to processors who have facilities, equipment, or outlets to repack or sell fruit in fresh form.

* * * * *

5. Section 944.350 is revised to read as follows:

§ 944.350 Safeguard procedures for avocados, grapefruit, kiwifruit, limes, olives, oranges, and table grapes exempt from grade, size, quality, and maturity requirements.

(a) Each person who imports:

(1) Avocados, grapefruit, kiwifruit, limes, olives, and oranges for consumption by charitable institutions or distribution by relief agencies;

(2) Avocados, grapefruit, kiwifruit, limes, oranges, and table grapes for processing;

(3) Olives for processing into oil;

(4) Grapefruit for animal feed; or

(5) Avocados for seed shall obtain an ''Importer's Exempt Commodity Form'' (FV–6 form) from the Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, and shall show the completed ''Importer's Exempt Commodity Form'' to the U.S. Customs Service Regional Director or District Director, as applicable, at the port at which the customs entry is filed. One copy shall be mailed to the Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA with a postmark no later than two days after the date of importation and a third copy shall accompany the lot to the exempt outlet specified on the form. Any lot offered for inspection and, all or a portion thereof, subsequently imported as exempt under this provision shall be reported on an ''Importer's Exempt Commodity Form'' and such form, accompanied by a copy of the applicable inspection certificate, shall be mailed to the Marketing Order Administration Branch.

(b) Each person who receives an exempt commodity for the purposes specified in paragraph (a) of this section shall also receive a copy of the same numbered Importer's Exempt Commodity Form filed by the importer or customs broker and shall certify, by completing and signing Section II of the form and mailing the form to the Marketing Order Administration Branch within two days of receipt of the exempt lot, that such lot has been received and will be utilized in the exempt outlet.

(c) It is the responsibility of the importer to notify the Marketing Order Administration Branch of any lot of exempt commodity rejected by a receiver, shipped to an alternative exempt receiver, exported, or otherwise destroyed. In such cases, a second ''Importer's Exempt Commodity Form'' must be filed by the importer providing sufficient information to determine ultimate disposition of the exempt lot and such disposition shall be so certified by the final receiver.

(d) All FV–6 forms and other correspondence regarding entry of 8e commodities must be mailed to the Marketing Order Administration Branch, USDA, AMS, P.O. Box 96456, room 2523–S, Washington, D.C. 20090–6456, telephone (202)–720–4607. FV–6 forms submitted by fax must be followed by a mailed, original copy of the FV–6 form. Fax transmissions may be sent to the MOAB at (202) 720–5698.

6. In § 944.401, paragraph (c) is revised to read as follows:

§ 944.401 Olive import regulation.

* * * * *

(c) The Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, is hereby designated as the governmental inspection service for the purpose of certifying the grade and size of processed olives from imported bulk lots for use in canned ripe olives and the grade and size of imported canned ripe olives. Inspection by said inspection service with appropriate evidence thereof in the form of an official inspection certificate, issued by the service and applicable to the particular lot of olives, is required. With respect to imported bulk olives, inspection and certification shall be completed prior to use as packaged ripe olives. With respect to canned ripe olives, inspection and certification shall be completed prior to importation. Any lot of olives which fails to meet the import requirements and is not being imported for purposes of contribution to a charitable organization or processing into oil may be exported or disposed of under the supervision of the Processed Products Branch, Fruit and Vegetable Division, AMS, USDA, with the cost of certifying the disposal borne by the importer. Such inspection and certification services will be available, upon application, in accordance with the applicable regulations governing the inspection and certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products (part 52 of this title). Application for inspection of canned ripe olives shall be made not less than 10 days prior to the time when the olives will be imported. Since inspectors are not located in the immediate vicinity of some of the small ports of entry, importers of canned ripe olives shall make arrangements for inspection through the following office at least 10 days prior to the time when the olives will be imported: Processed Products Branch, USDA, AMS, F&V Division, P.O. Box 96456, Room 0726–S, Washington, DC 20090–6456, telephone (202) 720–5021, fax (202) 690–1527. Application for inspection of processed bulk olives shall be made not less than 3 days prior to use in the production of canned ripe olives. Such application shall be made through one of the following offices: Regional Director, Eastern Regional Office, 800 Roosevelt Road, Building A, suite 380 Glen Ellyn, IL 60137, telephone (708) 790–6937/8/9, fax (708) 469–5162; or Regional Director, Western Regional Office, 2202 Monterey Street, suite 102–C, Fresno, CA 93721, telephone (209) 487–5891, fax (209) 487–5900.

* * * * *

7. In § 944.550, paragraph (d) is revised to read as follows:

§ 944.550 Kiwifruit import regulation.

* * * * *

(d) Any lot or portion thereof which fails to meet the import requirements and is not being imported for purposes of consumption by charitable institutions, distribution by relief agencies, or commercial processing into products may be reconditioned or exported. Any failed lot which is not reconditioned or exported shall be disposed of under supervision of the Federal or Federal-State Inspection Service with the costs of certifying the

disposal of said lot borne by the importer.

* * * * *

PART 980—VEGETABLES; IMPORT REGULATIONS

1. The authority citation for 7 CFR part 980 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 980.1, paragraph (i) is revised to read as follows:

§ 980.1 Import regulations; Irish potatoes.

* * * * *

(i) *Exemptions.* The grade, size, quality and maturity requirements of this section shall not be applicable to potatoes imported for canning, freezing, other processing, livestock feed, charity, or relief, but such potatoes shall be subject to the safeguard provisions contained in § 980.501. Processing includes canning, freezing, dehydration, chips, shoestrings, starch and flour. Processing does not include potatoes that are only peeled, or cooled, sliced, diced, or treated to prevent oxidation, or made into fresh potato salad.

3. In § 980.117, paragraph (i) is revised to read as follows:

§ 980.117 Import regulations; onions.

* * * * *

(i) *Exemptions.* The grade, size, quality and maturity requirements of this section shall not be applicable to onions imported for processing, livestock feed, charity, or relief, and pearl onions not larger than 1¾ inches in diameter, onion sets (plantings), braided red onions, and minimum quantity shipments of 110 pounds, but such onions shall be subject to the safeguard provisions in § 980.501. Processing includes canning, freezing, dehydration, extraction (juice) and pickling in brine. Processing does not include fresh chop, fresh cut, convenience food or other pre-packaged salad operations. Pearl onions must be inspected for size prior to entry into the United States.

4. In § 980.212, paragraph (i) is revised to read as follows:

§ 980.212 Import regulations; tomatoes.

* * * * *

(i) *Exemptions.* The grade, size, quality and maturity requirements of this section shall not apply to tomatoes for charity, relief, canning or pickling, but such tomatoes shall be subject to the safeguard provisions contained in § 980.501. Processing includes canning and pickling.

5. Section 980.501 is revised to read as follows:

§ 980.501 Safeguard procedures for potatoes, onions, and tomatoes exempt from grade, size, quality, and maturity requirements.

(a) Each person who imports:

(1) Potatoes, onions or tomatoes for consumption by charitable institutions or distribution by relief agencies;

(2) Potatoes, onions, or tomatoes for processing;

(3) Potatoes or onions for livestock feed; or

(4) Pearl onions, shall obtain an ''Importer's Exempt Commodity Form'' (FV–6) from the Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, and shall show the completed ''Importer's Exempt Commodity Form'' to the U.S. Customs Service Regional Director or District Director, as applicable, at the port at which the customs entry is filed. One copy shall be mailed to the Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA with a postmark no later than two days after the date of importation and a third copy shall accompany the lot to the exempt outlet specified on the form. Any lot offered for inspection and, all or a portion thereof, subsequently imported as exempt under this provision shall be reported on an ''Importer's Exempt Commodity Form'' and such form, accompanied by a copy of the applicable inspection certificate, shall be mailed to the Marketing Order Administration Branch.

(b) Each person who receives an exempt commodity for the purposes specified in paragraph (a) of this section shall also receive a copy of the same numbered Importer's Exempt Commodity Form filed by the importer or customs broker and shall certify, by completing and signing Section II of the form and mailing the form to the Marketing Order Administration Branch within two days of receipt of the exempt lot, that such lot has been received and will be utilized in the exempt outlet.

(c) It is the responsibility of the importer to notify the Marketing Order Administration Branch of any lot of exempt commodity rejected by a receiver, shipped to an alternative exempt receiver, returned to the country of origin, or otherwise disposed of. In such cases, a second ''Importer's Exempt Commodity Form'' must be filed by the importer providing sufficient information to determine ultimate disposition of the exempt lot and such disposition shall be so certified by the final receiver.

(d) All FV–6 forms and other correspondence regarding entry of 8e commodities must be mailed to the Marketing Order Administration Branch, USDA, AMS, P.O. Box 96456, room 2523–S, Washington, D.C. 20090–6456, telephone (202) 720–4607. FV–6 forms submitted by fax must be followed by a mailed, original copy of the FV–6. Fax transmissions may be sent to the MOAB at (202) 720–5698.

PART 999—SPECIALTY CROPS; IMPORT REGULATIONS

1. The authority citation for 7 CFR part 999 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 999.500 is revised to read as follows:

§ 999.500 Safeguard procedures for walnuts and certain dates exempt from grade, size, quality, and maturity requirements.

(a) Each person who imports:

(1) Dates which are donated to needy persons, prisoners or Native Americans on reservations; or

(2) Walnuts which are: green walnuts (so immature that they cannot be used for drying and sale as dried walnuts); walnuts used in non-competitive outlets such as use by charitable institutions, relief agencies, governmental agencies for school lunch programs, and diversion to animal feed or oil manufacture shall obtain an ''Importer's Exempt Commodity Form'' (FV–6) from the Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, and shall show the completed ''Importer's Exempt Commodity Form'' to the U.S. Customs Service Regional Director or District Director, as applicable, at the port at which the customs entry is filed. One copy shall be mailed to the Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, with a postmark not later than two days after the date of importation and a third copy shall accompany the lot to the exempt outlet specified on the form. Any lot offered for inspection and, all or a portion thereof, imported as exempt under this provision shall be reported on an ''Importer's Exempt Commodity Form'' and such form, accompanied by a copy of the applicable inspection certificate, shall be mailed to the Marketing Order Administration Branch.

(b) Each person who receives an exempt commodity for the purposes specified in paragraph (a) of this section shall also receive a copy of the same numbered Importer's Exempt Commodity Form filed by the importer or customs broker and shall certify, by completing and signing Section II of the form and mailing the form to the

Marketing Order Administration Branch within two days of receipt of the exempt lot, that such lot has been received and will be utilized in the exempt outlet.

(c) It is the responsibility of the importer to notify the Marketing Order Administration Branch of any lot of exempt commodity rejected by a receiver, shipped to an alternative exempt receiver, exported, or otherwise disposed of. In such cases, a second ''Importer's Exempt Commodity Form'' must be filed by the importer providing sufficient information to determine ultimate disposition of the exempt lot and such disposition shall be so certified by the final receiver.

(d) All FV–6 forms and other correspondence regarding entry of 8e commodities must be mailed to the Marketing Order Administration Branch, USDA, AMS, P.O. Box 96456, room 2523–S, Washington, D.C. 20090–6456, telephone (202) 720–4607. FV–6 forms submitted by fax must be followed by a mailed, original copy of the FV–6. Fax transmissions may be sent to the MOAB at (202) 720–5698.

Dated: February 23, 1996.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 96–7192 Filed 3–25–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1280

[No. LS–96–002]

Sheep Promotion, Research, and Information Program

AGENCY: Agricultural Marketing Service; USDA.

ACTION: Notice of Referendum Results

SUMMARY: The Agricultural Marketing Service (AMS) is announcing that sheep producers, sheep feeders, and importers of sheep and sheep products voting in a national referendum on February 6, 1996, have approved the Sheep and Wool Promotion, Research, Education, and Information Order (Order).

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, Livestock and Seed Division, AMS, USDA, Room 2606–S; P.O. Box 96456; Washington, D.C. 20090–6456.

SUPPLEMENTARY INFORMATION: Pursuant to the Sheep Promotion, Research, and Information Act of 1994, 7 U.S.C. 7101 *et seq.* (Act), the Department of Agriculture conducted a referendum on February 6, 1996, among eligible sheep producers, sheep feeders, and importers of sheep and sheep products to determine if an Order would become effective.

Of the 19,801 valid ballots cast, 10,707 (54.1 percent) favored and 9,094 (45.9 percent) opposed the implementation of the Order. Additionally, of those persons who cast valid ballots in the referendum, those who favored the Order account for 40 percent of the total production voted, and those opposed account for 60 percent of the total production voted. The Order could have been approved by either a majority of the producers, feeders, and importers voting in the referendum or by those voting in the referendum who accounted for at least two-thirds of the production represented.

Therefore, based on the referendum results, the Secretary of Agriculture has determined that the required majority of eligible producers, feeders, and importers who voted absentee or in person in the February 6, 1996, national referendum voted to implement the Order. As a result, a promotion, research, education, and information program will be funded by a mandatory assessment on domestic sheep producers, lamb feeders, and exporters of live sheep and greasy wool of 1 cent per pound on live sheep sold and 2 cents per pound on greasy wool sold. Importers will be assessed (1) 1 cent per pound on live sheep; (2) the equivalent of 1 cent per pound of live sheep for sheep products; and (3) 2 cents per pound of degreased wool or the equivalent of degreased wool for wool and wool products. Imported raw wool will be exempt from assessments. Each person who processes or causes to be processed sheep or sheep products of that person's own production and markets the processed products, will be assessed the equivalent of 1 cent per pound of live sheep sold or 2 cents per pound of greasy wool sold. All assessments may be adjusted in accordance with applicable provisions of the Act. The date when assessments will begin will be announced at a later date.

Dated: March 20, 1996.

Lon Hatamiya,

Administrator.

[FR Doc. 96–7191 Filed 3–25–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 204, 205 and 216

[INS No. 1705–95]

RIN 1115–AE04

Petition to Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant; Self-Petitioning for Certain Battered or Abused Spouses and Children

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the Immigration and Naturalization Service (''the Service'') regulations to allow a spouse or child to seek immigrant classification if he or she has been battered by, or subjected to extreme cruelty committed by, the citizen or lawful permanent resident spouse or parent. It also permits a spouse to seek classification if his or her child has been battered by, or subjected to extreme cruelty committed by, the citizen or lawful permanent resident spouse. A qualified spouse or child who is living in the United States but is not a permanent resident may use the procedures established by this rule to self-petition for immigrant classification. The self-petition may be filed without the abuser's knowledge or consent, and may include the children of a self-petitioning spouse. A person who is granted immigrant classification under this provision may become eligible for lawful permanent resident status. A lawful permanent resident of the United States has legal permission to live and work in this country, and may later qualify for U.S. citizenship through naturalization.

DATES: This interim rule is effective March 26, 1996. Written comments must be received on or before May 28, 1996.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., Room 5307, Washington, DC 20536, Attn: Public Comment Clerk. To ensure proper handling, please reference the INS number 1705–95 on your correspondence. Comments are available for public inspection at this location by calling (202) 514–3048 to arrange an appointment.

FOR FURTHER INFORMATION CONTACT:

Rita A. Arthur, Senior Adjudications Officer, Adjudications Division, Immigration and Naturalization Service, 425 I Street NW., Room 3214, Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION:

Background

The Immigration and Nationality Act (''the Act'') allows certain relatives of a citizen or lawful permanent resident of the United States to be classified for immigration. These relatives are not automatically entitled to immigrate; the Service must approve a visa petition filed by the citizen or lawful permanent resident for the family member, and the relative must qualify for immigrant visa issuance abroad or adjustment of status in the United States.

Citizens and lawful permanent residents may choose whether and when to petition for a relative. Most citizens and lawful permanent residents seek permission to bring their family members to the United States as soon as possible. They file for all their qualified relatives, except family members who do not want to live in the United States and those with whom they do not care to be reunited.

Some abusive citizens or lawful permanent residents, however, misuse their control over the petitioning process. Instead of helping close family members to legally immigrate, they use this discretionary power to perpetuate domestic abuse of their spouses and minor children who have been living with them in the United States. Abusers generally refuse to file relative petitions for their closest family members because they find it easier to control relatives who do not have lawful immigration status. These family members are less likely to report the abuse or leave the abusive environment because they fear deportation or believe that only citizens and authorized immigrants can obtain legal and social services. An abuser may also coerce family members' compliance in other areas by threatening deportation or by promising to file a relative petition in the future.

Crime Bill

The plight of these domestic abuse victims, who are unable to leave the United States for financial, social, cultural, or other reasons, was addressed by the Violent Crime Control and Law Enforcement Act of 1994 (''the Crime Bill''), Public Law 103–322, dated September 13, 1994. Title IV of the Crime Bill, The Violence Against Women Act of 1994 (''the VAWA''), contains several provisions that limit the ability of an abusive citizen or lawful permanent resident to use the immigration laws to further violence against a spouse or child in the United States. Although the title of this portion of the Crime Bill reflects the fact that many abuse victims are women, abused spouses and children of either sex may benefit from these provisions. Section 40701 of the Crime Bill allows a qualified spouse or child to self-petition for immigrant classification based on the relationship to the abusive citizen or lawful permanent resident of the United States, without the abuser's participation or consent. This section also permits an eligible abused spouse to include his or her children in the petition, if the children have not petitioned separately. Section 40702 of the Crime Bill, which will be the subject of a separate rulemaking, provides guidelines for the acceptance and evaluation of credible evidence of abuse submitted with certain requests for removal of conditions on residency under section 216 of the Act. Section 40703 of the Crime Bill, which will also be addressed separately, allows certain abused spouses and children who have been continuously physically present in the United States for the past 3 years to apply for suspension of deportation.

Basic Self-Petitioning Eligibility Requirements

A spouse who is self-petitioning under section 40701 of the Crime Bill must show that he or she: (1) is the spouse of a citizen or lawful permanent resident of the United States; (2) is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship; (3) is residing in the United States; (4) has resided in the United States with the citizen or lawful permanent resident spouse; (5) has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; (6) is a person of good moral character; (7) is a person whose deportation would result in extreme hardship to himself, herself, or his or her child; and (8) entered into the marriage to the citizen or lawful permanent resident in good faith.

A child who is self-petitioning under section 40701 of the Crime Bill must show that he or she: (1) is the child of a citizen or lawful permanent resident of the United States; (2) is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship; (3) is residing in the United States; (4) has resided in the United States with the citizen or lawful permanent resident parent; (5) has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident parent while residing with that parent; (6) is a person of good moral character; and (7) is a person whose deportation would result in extreme hardship to himself or herself.

Spouse of a Citizen or Lawful Permanent Resident

The Crime Bill's changes to section 204(a)(1) of the Act, which allow a self-petition to be filed, describe the spousal relationship between the self-petitioner and the abuser in the present tense. They characterize a self-petitioning spouse as a person who is the spouse of a citizen or lawful permanent resident of the United States, and include no provisions for filing a self-petition based on a former spousal relationship. This rule, therefore, requires the self-petitioning spouse to be legally married to the abuser when the petition is filed. It specifies that a spousal self-petition must be denied if the petitioner's marriage to the abuser legally ended by annulment, death, or divorce before that time. The rule also stipulates that the abuser be a citizen or lawful permanent resident of the United States when the self-petition is filed.

Although it does not allow a self-petition to be filed based on a former spousal relationship, section 40701 of the Crime Bill directs the Service not to revoke the approval of a self-petition solely because the marriage has legally ended. This statutory provision protects the self-petitioner against an abuser's attempt to regain control over the petitioning process through legal termination of the marriage. It also allows a qualified self-petitioner to make decisions concerning the abusive relationship without regard to immigration considerations. This rule reflects the legislative provision safeguarding the self-petitioner's control over the immigration classification process.

While section 40701 of the Crime Bill requires the marriage to be legally valid at the time of filing and specifies that its termination after approval will not be the sole basis for revocation, it does not address the effect of a legal termination occurring between the filing and the approval of the self-petition. In the absence of explicit legislative guidelines, the Service has determined that protections for spouses whose self-

petitions have been approved should be extended to cover the entire period after the self-petition is filed. This rule, therefore, allows an otherwise approvable self-petition to be granted despite the legal termination of the marriage through annulment, divorce, or death while the self-petition was pending before the Service. It provides that the legal termination of the marriage after the self-petition has been properly filed with the Service will have not effect on the Service's decision concerning the self-petition.

The rule further provides, however, that a pending spousal self-petition will be denied or an approved spousal self-petition will be revoked if the self-petitioner chooses to remarry before becoming a lawful permanent resident. By remarrying, the self-petitioner has established a new spousal relationship and has shown that he or she no longer needs the protections of section 40701 of the Crime Bill to equalize the balance of power in the relationship with the abuser. If the new husband or wife is a citizen or lawful permanent resident of the United States, he or she may file for the former self-petitioner's classification as an immigrant. The self-petitioner also would not be precluded from filing a self-petition based on the new family relationship if the new spouse is an abusive citizen or lawful permanent resident of the United States. A self-petition filed on the basis of a new marriage will be assigned a priority date based on the date it was properly filed with the Service or based on the date a visa petition filed by the current abusive spouse was properly filed with the Service. This rule does not allow a priority date to be transferred from a self-petition or visa petition based on a prior marriage.

It also provides that changes in the abuser's citizenship or lawful permanent resident status will not affect the validity of an approved self-petition. This provision eliminates the possibility that an abuser could recapture control over the immigration classification process by changing his or her own immigration status. An approved self-petition will not be revoked solely because the abuser subsequently abandons lawful permanent resident status, renounces United States Citizenship, is deported, or otherwise changes immigration status. Similarly, a self-petition approved on the basis of a relationship to a lawful permanent resident will not be automatically upgraded to a petition for immediate relative classification if the abuser becomes a naturalized citizen of the United States. A spouse would not be precluded from filing a new self-petition for classification as an immediate relative after the abuser naturalizes, provided he or she continues to meet the self-petitioning requirements.

This rule requires a self-petitioning spouse to provide documentary evidence of his or her legal relationship to the abuser and evidence of the abuser's immigration or citizenship status. Self-petitioners are encouraged to submit primary evidence whenever possible, although the Service will consider any relevant credible evidence. The Service's regulations at 8 CFR 204.1 and 204.2 provide detailed information concerning primary and secondary supporting documentation of a spousal relationship to a citizen or lawful permanent resident.

Primary evidence of a marital relationship is a marriage certificate issued by civil authorities and proof of the termination of all prior marriages, if any, of both the self-petitioner and the abuser. Primary evidence of the abuser's U.S. citizenship or lawful permanent residence is: (1) a birth certificate issued by a civil authority establishing the abuser's birth in the United States; (2) the abuser's unexpired full-validity United States passports; (3) a statement issued by a U.S. consular officer certifying the abuser to be a U.S. citizen and the bearer of a currently valid U.S. passport; (4) the abuser's Certificate of Naturalization or Certificate of Citizenship; (5) a Department of State Form FS–240, Report of Birth Abroad of a Citizen of the United States, relating to the abuser; or (6) the abuser's Form I–151 or Form I–551 Alien Registration Receipt Card, or other proof given by the Service as evidence of lawful permanent residence.

If primary or secondary evidence of an abuser's immigration or citizenship status is not available, this rule provides that the Service will attempt to electronically verify the abuser's status from information contained in Service computerized records. Other Service records may also be reviewed at the discretion of the adjudicating officer. If the Service is unable to identify a record as relating to the abuser or the record does not establish the abuser's immigration or citizenship status, the self-petition will be adjudicated based on the information submitted by the self-petitioner.

Child of a Citizen or Lawful Permanent Resident

Section 40701 of the Crime Bill describes a self-petitioning child as a person who is the child of a citizen or lawful permanent resident of the United States. By again characterizing the relationship between the self-petitioner and the abuser in the present tense, these amendments to the Act clearly show that the required relationship must exist when the petition is filed.

The term ''child'' is defined in section 101(b)(1) of the Act as including certain children born in or out of wedlock, and certain legitimated, adopted, and stepchildren. This definition also requires a child to be unmarried and less than 21 years of age. The rule, therefore, requires a self-petitioning child to be unmarried, less than 21 years of age, and to otherwise qualify as the abuser's ''child'' when the self-petition is filed and when it is approved. It also requires the self-petitioning child's abusive parent to be a U.S. citizen or lawful permanent resident when the self-petition is filed and when it is approved.

This rule specifies that an approved self-petition for a child of a United States citizen, however, will be automatically converted to an approved petition for classification as the unmarried or married adult son or daughter of a United States citizen when the self-petitioner reaches 21 years of age or marries. Similarly, an approved self-petition for a child of a lawful permanent resident of the United States will be automatically converted to an approved petition for classification as the unmarried adult son or daughter of a lawful permanent resident when the unmarried self-petitioner reaches 21 years of age. The approval of a self-petition for the child of an abusive lawful permanent resident must be automatically revoked, however, when the son or daughter marries. There is no immigration category for a married son or daughter of a lawful permanent resident. An automatically converted self-petition will retain the self-petition's original priority date.

Under the provisions of this rule, a self-petitioning child must be the child of the abusive citizen or lawful permanent resident but need not be the child of a self-petitioning spouse. A self-petition may be approved although the child's other parent is unable or unwilling to self-petition. The rule also does not require the self-petitioning child to be in the abuser's legal custody. Termination of the abuser's parental rights or a change in legal custody does not alter the self-petitioning relationship, provided the self-petitioner meets the definition of ''child'' contained in section 101(b)(1) of the Act when the self-petition is approved, or met that definition at the time of approval.

As discussed previously under ''Spouse of a citizen or lawful permanent resident,'' changes in the

abuser's citizenship or lawful permanent resident status will not affect the validity of an approved self-petition. This regulatory provision eliminates the possibility that an abuser could recapture control over the abused child's immigration classification by changing his or her own immigration status. An approved self-petition for a child will not be revoked solely because the abuser subsequently abandons lawful permanent resident status, renounces United States citizenship, is deported, or otherwise changes immigration status. Similarly, a self-petition approved on the basis of a parent-child relationship to a lawful permanent resident will not be automatically upgraded to a petition for immediate relative classification if the abuser becomes a naturalized citizen of the United States. The abused child would not be precluded from filing a new self-petition for classification as an immediate relative after the abuser naturalizes, provided the child continues to meet the self-petitioning requirements.

This rule requires a self-petitioning child to provide documentary evidence of his or her relationship to the abuser and evidence of the abuser's immigration or citizenship status. Self-petitioners are encouraged to submit primary evidence whenever possible, although the Service will consider any relevant credible evidence. The Service's regulations at 8 CFR 204.1 and 204.2 provide detailed information concerning primary or secondary supporting documentation of a parent-child relationship to a citizen or lawful permanent resident.

Primary evidence of the relationship between: (1) a child and an abusive biological mother is the child's birth certificate issued by civil authorities; (2) a child born in wedlock and an abusive biological father is the child's birth certificate issued by civil authorities, the marriage certificate of the child's parents, and evidence of legal termination of all prior marriages, if any; (3) a legitimated child and an abusive biological father is the child's birth certificate issued by civil authorities, and evidence of the child's legitimation; (4) a child born out of wedlock and an abusive biological father is the child's birth certificate issued by civil authorities showing the father's name, and evidence that a bona fide parent-child relationship has been established between the child and the parent; (5) a stepchild and a stepparent is the child's birth certificate issued by civil authorities, the marriage certificate of the child's parent and the stepparent showing marriage before the stepchild reached 18 years of age, and evidence of legal termination of all prior marriages of either parent, if any; (6) an adopted child and an abusive adoptive parent is an adoption decree showing that the adoption took place before the child reached 16 years of age, and evidence that the child has been residing with and in the legal custody of the abusive adoptive parent for at least 2 years.

Primary evidence of the abuser's U.S. citizenship or lawful permanent residence is: (1) a birth certificate issued by a civil authority establishing the abuser's birth in the United States; (2) the abuser's unexpired full-validity United States passport; (3) a statement issued by a U.S. consular officer certifying the abuser to be a U.S. citizen and the bearer of a currently valid U.S. passport; (4) the abuser's Certificate of Naturalization or Certificate of Citizenship; (5) a Department of State Form FS–240, Report of Birth Abroad of a Citizen of the United States, relating to the abuser; and (6) the abuser's Form I–151 or Form I–551 Alien Registration Receipt Card, or other proof given by the Service as evidence of lawful permanent residence.

If primary or secondary evidence of an abuser's immigration or citizenship status is not available, this rule provides that the Service will attempt to electronically verify the abuser's status from information contained in Service computerized records. Other Service records may also be reviewed at the discretion of the adjudicating officer. If the Service is unable to identify a record as relating to the abuser or the record does not establish the abuser's immigration or citizenship status, the self-petition will be adjudicated based on the information submitted by the self-petitioner.

Eligible for Immigrant Classification

Section 40701 of the Crime Bill requires a self-petitioning spouse or child to be eligible for classification as an immediate relative under section 201(b)(2)(A)(i) of the Act or for preference classification under section 203(a)(2)(A) of the Act. Eligibility as an immediate relative or for preference classification requires more than a mere showing of a legal relationship to a citizen or lawful permanent resident of the United States; other conditions must also be met. Section 40701 of the Crime Bill amended the Act to ensure that self-petitioners would be subject to certain provisions of the Immigration Marriage Fraud Amendments of 1986 (IMFA), Public Law 99–639, November 10, 1986, which were enacted by Congress to detect and deter immigration-related marriage fraud. This rule reflects these statutory requirements.

A petition must be denied under the provisions of section 204(c) of the Act if there is substantial and probative evidence that the self-petitioner has ever attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The self-petitioner does not need to have received a benefit through the attempt or conspiracy. He or she also need not have been convicted of, or even prosecuted for, the attempt or conspiracy. Evidence of the attempt or conspiracy, however, must be contained in the self-petitioner's immigration file.

Section 204(g) of the Act may also apply to a self-petition. It prohibits the approval of a self-petition if the marriage creating the relationship to the citizen or permanent resident took place while the self-petitioner was in deportation, exclusion, or related proceedings, unless the self-petitioner provides clear and convincing evidence that the marriage was not entered into for the purpose of obtaining immigration benefits. This limitation will not apply if the self-petitioner has lived outside the United States for at least 2 years after the marriage. The ''clear and convincing'' standard places a heavier burden on the petitioner than the ''preponderance of evidence'' criteria generally applicable to visa petitions and self-petitions. Although there may be no proof that the marriage was fraudulent, a self-petition subject to this restriction must be denied if the petitioner does not provide ''clear and convincing'' evidence that the marriage was entered into in good faith.

The provisions of section 204(a)(2) of the Act, which were amended by section 40701(b) of the Crime Bill to encompass certain self-petitions, may also preclude the approval of a self-petition. A self-petition must be denied if the lawful permanent resident abuser acquired permanent residence within the past 5 years based on a marriage to a citizen or lawful permanent resident, unless the petition is supported by clear and convincing evidence that the prior marriage was not entered into for the purpose of evading any provision of the immigration laws. This restriction will not apply if the earlier marriage ended because of the death of the spouse. As explained in the previous paragraph, the ''clear and convincing'' standard imposes a heavier burden of proof on the self-petitioner. Although there may be no proof that the marriage was fraudulent, a self-petition subject to this restriction must be denied if the petitioner does not provide ''clear and

convincing'' evidence that the earlier marriage was bona fide.

Before determining that a self-petition must be denied under section 204(c), 204(g), or 204(a)(2) of the Act, the Service will allow a self-petitioner the opportunity to provide additional evidence or arguments concerning the case. A denial under section 204(g) or 204(a)(2) of the Act is without prejudice to the filing of a new self-petition when the spouse or child is able to comply with these requirements.

The Service has previously determined that a variety of evidence may be used to establish a good-faith marriage, and a self-petitioner should submit the best evidence available. Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. *Matter of Laureano,* 19 I&N Dec. 1 (BIA 1983). Other types of readily available evidence might include the birth certificates of children born to the relationship; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. Self-petitioners who submit affidavits are encouraged to submit affidavits from more than one person. Other types of evidence may also be submitted; the Service will consider any relevant credible evidence.

Residence in the United States and Residence With the Abuser

Section 40701 of the Crime Bill requires the self-petitioner to be residing in the United States and to have resided in the United States with the abuser. A self-petition will not be approved if the self-petitioner is not living in the United States or has never lived with the abuser in the United States. Under the provisions of this rule, however, the self-petitioner is not required to be residing with the abuser when the petition is filed. The rule also does not limit the time that may have elapsed since the self-petitioner last resided with the abuser.

''Residence'' is defined in section 101(a)(33) of the Act as a person's general place of abode. It is also described as a person's principal, actual dwelling place in fact, without regard to intent. A self-petitioner cannot meet the residency requirements by merely visiting the United States or visiting the abuser's home in the United States while continuing to maintain a general place of abode or principal dwelling place elsewhere. This rule, however, does not require the self-petitioner to have lived in the United States or with the abuser in the United States for any specific length of time. It also does not mandate continuous physical presence in the United States. A qualified self-petitioner may have moved to the United States only recently, made any number of trips abroad, or resided with the abuser in the United States for only a short time.

Evidence of residency with the abuser in the United States may take many forms. Employment records, utility receipts, school records, hospital or medical records, birth certificates of children born to the spouses in the United States, deeds, mortgages, rental records, insurance policies, or similar documents have been accepted as evidence of residency. This rule allows the submission of one or more documents showing the self-petitioner and the abuser residing together. It also allows the submission of two or more documents that, when considered together, establish that the self-petitioner and the abuser were residing at the same location concurrently. A self-petitioner may also submit affidavits to establish residency with the abuser. Self-petitioners who file affidavits are encouraged to provide the affidavits of more than one person. Other types of evidence may also be submitted; the Service will consider any relevant credible evidence.

Battery or Extreme Cruelty

Section 40701 of the Crime Bill requires a self-petitioning spouse to have been battered by, or been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident spouse; or to be the parent of a child who was battered by, or who was the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage. It requires a self-petitioning child to have been battered by, or to have been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident parent while the child was residing with that parent. This rule reflects the statutory requirements by specifying that only certain types of abuse will qualify a spouse or child to self-petition. ''Qualifying abuse'' under this rule is abuse that meets the criteria of section 40701 of the Crime Bill concerning when, by whom, to whom, and to what degree the domestic abuse occurred.

The qualifying abuse must have taken place during the statutorily specified time. A spousal self-petitioner must show that the abuse took place during the marriage to the abuser. A self-petitioning child must show that he or she was abused while residing with the abuser. Battery or extreme cruelty that happened at other times is not qualifying abuse. There is no limit on the time that may have elapsed since the last incident of qualifying abuse occurred.

The qualifying abuse also must have been committed by the abusive citizen or lawful permanent resident spouse or parent. Battery or extreme cruelty by any other person is not qualifying abuse, unless it can be shown that the citizen or lawful permanent resident willfully condoned or participated in the abusive act(s).

Only abuse perpetrated against the self-petitioning spouse, the self-petitioning child, or the self-petitioning spouse's child will be considered qualifying. Acts ostensibly aimed at some other person or thing may be considered qualifying only if it can be established that these acts were deliberately used to perpetrate extreme cruelty against the self-petitioner or the self-petitioning spouse's child. Battery or extreme cruelty committed solely against a third party and in no way directed at or used against the spouse or child is not qualifying abuse.

The qualifying abuse also must have been sufficiently aggravated to have reached the level of battery or extreme cruelty. Service regulations at 8 CFR 216.5(e)(3)(i) currently define the phrase ''was battered by or was the subject of extreme cruelty.'' This definition was initially developed to facilitate the filing and adjudication of requests to waive certain requirements for removal of conditions on residency. These waivers are based on the applicant's claim of battery or extreme cruelty perpetrated by the citizen or lawful permanent resident spouse or parent. Since the regulatory definition has proven to be flexible and sufficiently broad to encompass all types of domestic battery and extreme cruelty, this rule adopts an identical definition for evaluating claims of battering or extreme cruelty under section 40701 of the Crime Bill. The definition reads as follows:

> For the purpose of this chapter, the phrase ''was battered by or was the subject of extreme cruelty'' includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence.

The acts mentioned in this definition—rape, molestation, incest if the victim is a minor, and forced prostitution—will be regarded by the Service as acts of violence whenever they occur. Many other abusive actions, however, may also be qualifying acts of violence under this rule. Acts that, in and of themselves, may not initially appear violent may be part of an overall pattern of violence. It is not possible to cite all perpetrations that could be acts of violence under certain circumstances. The Service does not wish to mislead a potentially qualified self-petitioner by establishing a partial list that may be subject to misinterpretation. This rule, therefore, does not itemize abusive acts other than those few particularly egregious examples mentioned in the definition of the phrase ''was battered by or was the subject of extreme cruelty.''

This rule requires a self-petitioner to provide evidence of qualifying abuse. If the self-petition is based on a claim that the self-petitioning spouse's child was battered or subjected to extreme cruelty committed by the citizen or lawful permanent resident spouse, this rule requires the self-petition to be accompanied by evidence of the abuse and evidence of the relationship between the self-petitioner and the abused child. Available relevant evidence will vary, and self-petitioners are encouraged to provide the best available evidence of qualifying abuse. A self-petitioner is not precluded from submitting documentary proof of non-qualifying abuse with the self-petition; however, that evidence can only be used to establish a pattern of abuse and violence and to bolster claims that qualifying abuse also occurred.

The rule provides that evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. This rule also provides that other forms of credible evidence will be accepted, although the Service will determine whether documents appear credible and the weight to be given to them.

Self-petitioners who can provide only affidavits are encouraged to submit the affidavits of more than one person. The Service is not precluded from deciding, however, that the self-petitioner's unsupported affidavit is credible and that it provides relevant evidence of sufficient weight to meet the self-petitioner's burden of proof.

Good Moral Character

Section 40701 of the Crime Bill requires all self-petitioners to be persons of good moral character, but does not specify the period for which good moral character must be established. This rule requires self-petitioning spouses and self-petitioning children who are 14 years of age or older to provide evidence showing that they have been persons of good moral character for the 3 years immediately preceding the date the self-petition is filed. It does not preclude the Service from choosing to examine the self-petitioner's conduct and acts prior to that period, however, if there is reason to believe that the self-petitioner may not have been a person of good moral character in the past. The rule provides that self-petitioning children who are less than 14 years of age are not required to submit evidence of good moral character when filing the self-petition. A self-petitioner who is less than 14 years of age will be presumed to be a person of good moral character. This presumption does not preclude the Service from requesting evidence of good moral character, however, if there is reason to believe that the self-petitioning child may lack good moral character. The rule provides that a self-petition filed by a person of any age may be denied or revoked if evidence establishing that the person lacks good moral character is contained in the Service file.

It also provides that the Service will evaluate claims of good moral character on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. Section 101(f) of the Act lists the classes of persons who cannot be found to be persons of good moral character, and specifies that persons not within any of those classes may also be found to be lacking good moral character. The Service cannot find a person to be of good moral character under section 101(f) if he or she: (1) is or was a habitual drunkard; (2) is or was engaged in prostitution during the past 10 years as described in section 212(a)(2)(D) of the Act; (3) is or was involved in the smuggling of a person or persons into the United States as described in section 212(a)(6)(E) of the Act; (4) is or was a practicing polygamist; (5) has been convicted or admits committing acts that constitute a crime involving moral turpitude other than a purely political offense, except for certain petty offenses or offenses committed while the person was less than 18 years of age as described in section 212(a)(2)(A)(ii) of the Act; (6) has committed two or more offenses for which the applicant was convicted and the aggregate sentence actually imposed was 5 years or more, provided that, if an offense was committed outside the United States, it was not a purely political offense; (7) has violated laws relating to a controlled substance, except for simple possession of 30 grams or less of marijuana; (8) earns his or her income principally from illegal gambling activities or has been convicted of two or more gambling offenses; (9) has given false testimony for the purpose of obtaining immigration benefits; (10) has been confined as a result of conviction to a penal institution for an aggregate period of 180 days or more; or (11) has been convicted of an aggravated felony.

The Service must conclude that a person who has been convicted of an offense falling within section 101(f) of the Act lacks good moral character. The Service may only look to the judicial records to determine whether the person has been convicted of the crime, and may not look behind the conviction to reach an independent determination concerning guilt or innocence. *Pablo v. INS*, 72 F.3d 110, 113 (9th Cir. 1995); *Gouveia v. INS*, 980 F.2d 814, 817 (1st Cir. 1992); and *Matter of Roberts*, Int. Dec. 3148 (BIA 1991).

Extenuating circumstances may be taken into account, however, if the person has not been convicted of the offense in a court of law but admits to the commission of an act or acts that could show a lack of good moral character. The Board of Immigration Appeals (BIA) has ruled that a person who admitted to having engaged in prostitution under duress but had no prostitution convictions was not excludable as a prostitute under section 212(a)(12) of the Act (currently section 212(a)(2)(D) of the Act) because she was involuntarily reduced to such a state of mind that she was actually prevented from exercising free will through the use of wrongful, oppressive threats, or unlawful means. *Matter of M–*, 7 I&N Dec. 251 (BIA 1956). A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable, therefore, would not be precluded from being found to be a person of good moral character if the person has not been convicted for the

commission of the offense or offenses in a court of law.

This rule also provides that a person will be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she: (1) willfully failed or refused to support dependents; or (2) committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character.

Under this rule, primary evidence of good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

The Service of the Department of State will conduct additional record checks before issuing an immigrant visa or granting a self-petitioner's application for adjustment of status. If the results of these record checks disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a period of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

Extreme Hardship

Section 40701 of the Crime Bill also requires a self-petitioning spouse to show that his or her deportation would cause extreme hardship to himself, herself, or his or her child. It similarly requires a self-petitioning child to show that his or her deportation would cause extreme hardship to himself or herself. The self-petitioner has the burden of proof; a self-petition must be denied if the petitioner does not show that his or here deportation would cause extreme hardship. Hardship to persons other than the self-petitioner or the child of a self-petitioning spouse, such as extended family members, cannot be the basis for a self-petition under this rule.

The phrase ''extreme hardship'' is not defined in the Act, and sections 40701 and 40703 of the Crime Bill provide no additional guidelines for the interpretation of this requirement. The phrase ''extreme hardship'' has acquired a settled judicial and administrative meaning, however, largely in the context of suspension of deportation cases under section 244 of the Act.

It has been found that the personal deprivation contemplated in a situation characterized by ''extreme hardship'' within the meaning of section 244 of the Act is not a definable term of fixed and inflexible content or meaning; it necessarily depends upon the facts and circumstances peculiar to each case. *Matter of Hwang,* 10 I&N Dec. 448 (BIA 1964). The hardship requirement encompasses more than the mere economic deprivation that might result from an alien's deportation for the United States. *Davidson* v. *INS,* 558 F.2d 1361 (9th Cir. 1977); and *Matter of Sipus,* 14 I&N Dec. 229 (BIA 1972). It has also been found that the loss of a job and the concomitant financial loss incurred is not synonymous with extreme hardship. *Lee* v. *INS,* 550 F.2d 554 (9th Cir. 1977). Similarly, readjustment to life in the native country after having spent a number of years in the United States is not the type of hardship that has been characterized as extreme, since most aliens who have spent time abroad suffer this kind of hardship. *Matter of Uy,* 11 I&N Dec. 159 (BIA 1965).

''Extreme hardship'' must be evaluated on a case-by-case basis after a review of all the circumstances in the case. This rule, therefore, does not include a list of ''factors'' that would automatically establish an applicant's claim to extreme hardship. Each self-petitioner is encouraged to cite and document all the reasons that he or she believes that deportation would cause extreme hardship.

Some precedent suspension of deportation cases have discussed the reasons why a particular applicant was found to have established that his or her deportation would cause extreme hardship. These reasons include the: (1) age of the person; (2) age and number of the person's children and their ability to speak the native language and adjust to life in another country; (3) serious illness of the person or his or her child which necessitates medical attention not adequately available in the foreign country; (4) person's inability to obtain adequate employment in the foreign country; (5) person's and the person's child's length of residence in the United States; (6) existence of other family members who will be legally residing in the United States; (7) irreparable harm that may arise as a result of disruption of education opportunities; and (8) adverse psychological impact of deportation.

In some self-petitioning cases, the circumstances surrounding domestic abuse and the consequences of the abuse may cause the extreme hardship. These self-petitioners may wish to cite and provide evidence relating to some or all of the following areas, in addition to any other basis for believing that deportation would cause extreme hardship: (1) the nature and extent of the physical and psychological consequences of the battering or extreme cruelty; (2) the impact of the loss of access to the U.S. courts and criminal justice system (including, not limited to, the ability to obtain and enforce: orders of protection; criminal investigations and prosecutions; and family law proceedings or court orders regarding child support, maintenance, child custody and visitation); (3) the self-petitioner's and/or the self-petitioner's child's need for social, medical, mental health, or other supportive services which would not be available or reasonably accessible in the foreign country; (4) the existence of laws, social practices, or customs in the foreign country that would penalize or ostracize the self-petitioner or the self-petitioner's child for having been the victim of abuse, for leaving the abusive situation, or for actions taken to stop the abuse; (5) the abuser's ability to travel to the foreign country and the ability and willingness of foreign authorities to protect the self-petitioner and/or the self-petitioner's child from future abuse; and (6) the likelihood that the abuser's family, friends, or others acting on behalf of the abuser in the foreign country would physically or psychologically harm the self-petitioner and/or the self-petitioner's child.

The Service will develop and provide further interpretive guidance concerning the extreme hardship determination in self-petitioning cases to the Service officers who will adjudicate these self-petitions. This guidance is expected to be in the form of implementing directives, training courses, the field handbook currently under development by the Service, and other policy and procedural directives.

Good Faith Marriage

Section 40701 of the Crime Bill requires a self-petitioning spouse to show that he or she entered into the marriage to the abusive citizen or lawful permanent resident in good faith. This rule provides, therefore, that a self-petition cannot be approved if the self-petitioner married the abuser solely to obtain immigration benefits. A self-petitioning spouse who is not subject to the limitations imposed by IMFA need only provide a ''preponderance'' of evidence showing that he or she married in good faith. Persons who are subject to the IMFA restrictions may be required to meet a heavier burden of proof to establish that a marriage was entered into in good faith, as discussed previously in the section entitled ''Eligibility for Immigrant Classification.''

The Act does not define a ''good-faith'' marriage or provide guidelines for evaluating the bona fides of a marriage; however, persons applying for immigration benefits based on a marriage are generally required to establish that they entered into the marriage in good faith, and a significant body of case law has developed concerning the interpretation of this requirement. It has long been held that a marriage that is entered into for the primary purpose of circumventing the immigration laws, referred to as a fraudulent or sham marriage, cannot be recognized as enabling a spouse to obtain immigration benefits. *Lutwak* v. *United States,* 344 U.S. 604 (1953) and *Matter of Phillis,* 15 I&N Dec. 385 (BIA 1975). A spousal petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable. *Matter of McKee,* 17 I&N Dec. 332 (BIA 1980). The key factor in determining whether a person entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of the marriage. The person's conduct after marriage is relevant only to the extent that it bears upon his or her subjective state of mind at the time of the marriage. Separation from the other spouse, even shortly after the marriage took place, does not prove, by itself, that a marriage was not entered into in good faith. *Bark* v. *INS,* 511 F.2d 1200 (9th Cir. 1975).

This rule allows the submission of a variety of evidence to show a good-faith marriage. The self-petitioner should submit the best evidence available. Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. *Matter of Laureano, supra.* Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship.

Derivative Child Included in the Self-Petition

Section 40701 of the Crime Bill allows any child of a self-petitioning spouse to be derivatively included in the self-petition, if the child has not been classified as an immigrant based on his or her own self-petition. This rule allows a derivative child who has been included in a parent's petition to later file a self-petition, provided the child meets the self-petitioning requirements. It also allows a child who has been classified as an immigrant based on a petition filed by the abuser or another relative to be derivatively included in a parent's self-petition; including the child in the self-petition will not affect the validity of the petition submitted by the abuser or another relative.

No separate petition is necessary for derivative classification, and the child is not required to have been the victim of abuse. The derivative child also does not need to have lived in the United States or to otherwise satisfy the criteria for filing a self-petition. He or she, however, must meet the requirements for immigrant visa issuance abroad or adjustment of status in the United States. An eligible child, including a child born after the self-petition was approved, may be added to a self-petitioning spouse's petition when the self-petitioner applies for an immigrant visa abroad or adjustment of status in the United States. A new petition will not be required.

This rule further specifies that a derivative child need not be the child of the abuser, but must qualify as the self-petitioning spouse's child under the definition of ''child'' contained in section 101(b)(1) of the Act. The statutory definition includes certain children born in or out of wedlock, and certain legitimated, adopted, and stepchildren. It also requires a child to be unmarried and less than 21 years old. This rule requires a derivative child to continue to be a ''child'' until he or she becomes a lawful permanent resident based on the derivative classification. A derivative son or daughter who is married or more than 21 years old will not be issued an immigrant visa or granted adjustment of status as a derivative child.

Since derivative status is based solely on the relationship to the principal self-petitioner, the rule also provides that the derivative child can be granted lawful permanent residence only if the child is accompanying or following-to-join the self-petitioner. No derivative benefit can be granted if the principal self-petitioner does not become a lawful permanent resident.

This rule does not require the submission of documentary evidence of the derivative relationship with the self-petition. Such documents must be submitted, however, when the child applies for an immigrant visa abroad or adjustment of status to that of a lawful permanent resident of the United States based on the derivative relationship. Primary evidence of a parent-child relationship has been previously discussed under ''Child of a Citizen or Lawful Permanent Resident.'' The Service's regulations at 8 CFR 204.1 and 204.2 provide additional information concerning primary or secondary supporting documentation of a parent-child relationship. Other types of evidence not specifically discussed in this rule or the Service regulations may also be submitted; the Service will consider any relevant credible evidence.

Evidence in General

In accordance with the provisions of section 40701 of the Crime Bill, this rule provides that the Service will consider all credible evidence submitted with the application before reaching a decision. It also states that the Service will determine what evidence is credible and what weight to give to this evidence.

Generally, more weight will be given to primary evidence and evidence provided in court documents, medical reports, police reports, and other official documents. Self-petitioners, therefore, are strongly encouraged to submit this type of evidence whenever possible. Self-petitioners who submit affidavits are urged, but not required, to provide affidavits from more than one person. Other forms of documentary evidence may also be submitted, including evidence that has not been discussed in this rule or identified in the Service regulations.

The Service's regulations at 8 CFR 103.2 and 204.1(f) provide detailed information about the requirements applicable to supporting documentation. An ordinary legible photocopy of any supporting document may be submitted with a petition, although the Service reserves the right to require presentation of the original

document. An original document requested by the Service will be returned to the petitioner when it is no longer needed. Original documents submitted by the petitioner but not requested by the Service will remain a part of the record. Each foreign language document must be accompanied by an English translation that has been certified by a competent translator.

Proper Filing and Priority Dates

This rule requires self-petitioners to complete Form I–360, Petition for Amerasian, Widow(er) or Special Immigrant. As directed in 8 CFR 103.2(a)(2), the person filing the self-petition must sign the Form I–360. A parent or guardian, however, may sign the petition for a child who is less than 14 years of age. Any self-petitioner may be represented by an attorney or accredited representative as described in 8 CFR 103.2(a)(3), if he or she so chooses.

Each self-petition must be accompanied by the fee required by 8 CFR 103.7(b)(1). A self-petitioner who is unable to pay the prescribed fee may request a fee waiver under the provisions of 8 CFR 103.7(c). The self-petition should also be accompanied by the documentary evidence specified in this rule.

Under the provisions of this rule, a self-petition filed concurrently with a Form I–485, Application to Register Permanent Residence or Adjust Status, may be filed at the office having jurisdiction over the adjustment of status application. Other self-petitions should be filed at the INS Service Center having jurisdiction over the self-petitioner's place of residence as described in the instructions to Form I–360. Since section 40701 of the Crime Bill requires all self-petitioners to be residing in the United States when the self-petition is filed, a self-petition cannot be filed at a United States consulate or embassy abroad. A self-petition also cannot be filed at a Service office overseas. Consular officials and Service officers overseas have not been delegated the authority to approve a self-petition.

In accordance with standard procedures, a self-petition received in a Service office will be stamped to show the time and date of actual receipt. It will be regarded as properly filed on that date, provided it is properly signed and executed, the required fee is attached or a fee waiver is granted, and it otherwise complies with the provisions of 8 CFR 103.2. This rule provides that the priority date will be the date the self-petition is properly filed. A self-petitioner who has been the beneficiary of a visa petition filed by the abuser to accord the self-petitioner immigrant classification as his or her spouse or child, however, will be allowed to transfer the visa petition priority date to the self-petition. The earlier priority date may be assigned without regard to the current validity of the visa petition. The burden of proof to establish the filing of the visa petition lies with the self-petitioner, although the Service will attempt to verify a claimed filing through a search of the Service's computerized records or other records deemed appropriate by the adjudicating officer.

Decision

If the preliminary decision on a properly filed self-petition is adverse to the self-petitioner, the self-petitioner will be provided with written notice of this fact and offered an opportunity to present additional information or arguments before a final decision is rendered. If the preliminary decision is based on derogatory information of which the self-petitioner is unaware, the self-petitioner will also be offered an opportunity to rebut the derogatory information in accordance with the provisions of 8 CFR 103.2(b)(16).

Each self-petitioner will be sent a written notice of the final decision on his or her self-petition. If the petition is denied, he or she will be informed in writing of the basis for the denial and of the right to appeal. This rule allows an adverse decision on a self-petition to be appealed to the Associate Commissioner for Examinations in accordance with the provisions of 8 CFR 103.3.

Eligibility for Immigrant Visa Issuance or Adjustment of Status

Approval of a self-petition does not guarantee immediate eligibility for immigrant visa issuance or adjustment of status to that of a lawful permanent resident of the United States. The beneficiary of an approved self-petition must meet several additional requirements before he or she will be found eligible for lawful permanent residence in the United States.

Neither the Act nor this rule limits the overall number of self-petitions that may be accepted and approved by the Service. Some persons who are the beneficiaries of approved self-petitions, however, will be forced to delay filing their applications for immigrant visa issuance or adjustment of status because sections 201 and 202 of the Act place certain limits on the number of qualified persons who may be granted lawful permanent residence during any single year. Self-petitioners who are subject to these limitations are encouraged to file the self-petition and establish the earliest possible priority date, since the available immigrant visa numbers are allocated to qualified immigrant visa applicants and qualified adjustment of status applicants strictly in priority date order.

Under the provisions of the Crime Bill, any self-petitioner who qualifies for immigrant classification as the spouse or child of an abusive citizen of the Untied States is regarded as an immediate relative of a U.S. citizen under section 201(b) of the Act and is not subject to direct numerical limitations. A qualified derivative child of a self-petitioning spouse of an abusive citizen of the United States is also considered to be an immediate relative under section 201(b) of the Act and is also exempted from these limitations. These self-petitioners may apply for immigrant visa issuance abroad or adjustment of status to that of a lawful permanent resident of the United States without regard to numerical limitations.

A self-petitioner who is the spouse or child of an abusive permanent resident of the United States, however, is subject to immigrant visa number limitations, as are the qualified derivative children of spouses of abusive permanent residents. These self-petitioners and their derivative children are not eligible to apply for immigrant visa issuance or adjustment of status until their immigrant visa numbers have become immediately available. Visa numbers for these self-petitioners and their derivative children are considered immediately available only when the Department of State Bureau of Consular Affairs Visa Office Bulletin shows the priority date for the applicant's country of birth under the family-sponsored 2A second preference classification as ''current'' or lists a date that is earlier than the self-petitioner's priority date.

In addition to meeting requirements concerning visa number availability, a self-petitioner who is applying for an immigrant visa at a U.S. consulate or embassy abroad must prove that he or she is not included in any of the classes of persons who, by law, cannot be admitted to the United States, or that any basis for inadmissibility has been waived. A person seeking immigrant visa issuance abroad may also be subject to the provisions of section 212(o) of the Act. This provision requires a person who was not in lawful nonimmigrant status on the day he or she last left the United States to remain outside the country for at least 90 days before obtaining an immigrant visa. An immigrant may lawfully travel to the

United States immediately after the visa is issued. A qualified immigrant visa holder becomes a lawful permanent resident upon admission to the United States.

A self-petitioner who is seeking immigrant visa issuance abroad will be contacted by the Department of State's National Visa Center (NVC) when that office has received the approved self-petition from the Service and an immigrant visa number is available. Immigrant visa applicants should follow the instructions provided by NVC and the U.S. consulate or embassy processing their requests. Persons wishing further information about immigrant visa issuance abroad should contact the Department of State or a United States embassy or consulate abroad.

The Act also allows certain persons who are physically present in the United States to adjust status to that of a lawful permanent resident of the United States. Like immigrant visa applicants, adjustment of status applicants must prove that they are eligible for immigrant classification. Each applicant must also be exempt from immigrant visa number limitations or show that an immigrant visa number is immediately available for him or her. An applicant must further prove that he or she is not included in any of the classes of persons who, by law, cannot be admitted to the United States, or that any basis for inadmissibility has been waived. Persons seeking adjustment of status must also meet the applicable requirements of section 245 of the Act. A qualified adjustment applicant becomes a lawful permanent resident upon approval of the adjustment of status application.

Section 40701 of the Crime Bill does not provide adjustment of status benefits. Self-petitioners, however, may benefit from certain other provisions of the Act. One such provision is a recently enacted law that temporarily allows many previously ineligible persons to seek adjustment of status in the United States. This law, section 506(b) of the Department of Commerce, Justice, State, the Judiciary and Related Agencies Appropriations Act, 1995, Public Law 103–317, was enacted August 26, 1994. It lifts certain restrictions on adjustment of status under section 245 of the Act on applications granted before October 1, 1997. Persons seeking the adjustment of status benefits of Public Law 103–317 may be subject to a financial penalty, since the law requires most persons seeking adjustment of status under this provision to pay an additional sum in excess of the standard adjustment of status filing fee. Additional information concerning adjustment of status under Public Law 103–317 may be obtained by requesting Supplement A to Form I–485 from a local Service office.

Certain restrictions on adjustment of status have not been waived by section 40701 of the Crime Bill and cannot be waived under Public Law 103–317. These restrictions include those imposed by section 245(d) of the Act, which prohibit the adjustment of status of a person who is a conditional resident under section 216 or 216A of the Act. The adjustment of status of a person last admitted to the United States as a K–1 finance(e) is also barred, unless the person is seeking adjustment as a result of the marriage to the United States citizen who filed the finance(e) petition. Section 245(d) of the Act similarly prohibits the adjustment of status of a person who was last admitted as the K–2 child of a finance(e) parent, unless the person is seeking adjustment as a result of his or her parent's marriage to the citizen who filed the finance(e) petition. A self-petitioner who last entered in K–1 or K–2 nonimmigrant status would be subject to these restrictions, as would his or her derivative children who last entered in K–2 nonimmigrant status, unless the abuser is also the citizen who had filed the finance(e) petition. The statutory language of section 245(d) of the Act does not preclude a conditional resident, a person who last entered the United States with a finance(e) visa, or a person who last entered the country as a dependent child of a finance(e) from filing a self-petition and seeking immigrant visa issuance abroad.

An application for adjustment of status may be filed concurrently with the self-petition, if the self-petitioner is exempt from immigrant visa number limitations or if an immigrant visa number would be immediately available if the self-petition was approved. Other self-petitioners who wish to adjust status in the United States may file the self-petition separately and submit the adjustment of status application when their immigrant visa numbers become available. Self-petitioners who would like more information about the requirements for adjustment of status in the United States may request Form I–485 from the service office serving their local area.

Conditions on Residency Under Section 216 of the Act

Section 216 of the Act was enacted as part of IMFA to detect and deter immigration-related marriage fraud. It imposes conditions on the lawful permanent resident status of certain persons who obtain residency through marriage. A spouse or child may be subject to these restrictions if he or she becomes a lawful permanent resident based on a relationship created by a marriage entered into less than 2 years before residency is granted. The conditions on residency under section 216 of the Act may be removed only upon fulfillment of certain requirements. A conditional resident who does not file a joint petition with the citizen or permanent resident spouse during the 90 days prior to the second anniversary of the date residency was granted may have residency status terminated. Section 216 of the Act also provides three waivers of the joint petitioning requirement. One waiver exempts a conditional resident from filing a joint petition if he or she has been battered by, or subjected to extreme cruelty committed by, the citizen or lawful permanent resident; or if his or her child has been battered by, or subjected to extreme cruelty committed by, the citizen or lawful permanent resident. The Service has determined that no useful purpose would be served by imposing the conditional residency requirements of section 216 of the Act on any self-petitioner; all self-petitioners would necessarily be eligible for waivers of the joint petitioning requirement. This rule provides, therefore, that the conditional residence requirements of section 216 of the Act will not apply to a person who obtains lawful permanent resident status based on an approved self-petition, regardless of the date of the marriage.

Employment Authorization

Section 40701 of the Crime Bill does not direct the Service to provide employment authorization based solely on the filing or approval of a self-petition. A self-petitioner, however, may be eligible to apply for employment authorization under the existing provisions of 8 CFR 274a.12. Qualified applicants who wish to request employment authorization should complete and file Form I–765, Application for Employment Authorization, according to the instructions provided with the form. A self-petitioner who substantiates that he or she is unable to pay the Form I–765 application fee may be granted a fee waiver in accordance with the provisions of 8 CFR 103.7(c).

Many self-petitioners will qualify for employment authorization under 8 CFR 274a.12(c)(9). This provision allows a person who has properly filed an adjustment of status application under section 245 of the Act to request

employment authorization while the adjustment application is pending before the Service.

Most other self-petitioners will be eligible to request voluntary departure prior to or after a deportation hearing for the reasons set forth in 8 CFR 242.5(a)(2)(v), (vi), or (viii), and may qualify for employment authorization based on the grant of voluntary departure. Voluntary departure may be granted under 8 CFR 242.5(a)(2)(v) to a person who lost his or her nonimmigrant student or exchange visitor status (F–1, F–2, J–1, or J–2 nonimmigrant classification) solely because a private bill had been introduced in his or her behalf. It may be granted under 8 CFR 242.5(a)(2)(vi) to a person who is admissible to the United States as an immigrant, and: (1) who is an immediate relative of a U.S. citizen; or (2) is otherwise exempt from the numerical limitation on immigrant visa issuance; or (3) has a priority date for an immigrant visa not more than 60 days later than the date shown in the latest Visa Office Bulletin and has applied for an immigrant visa at a United States Consulate which has accepted jurisdiction over the case; or (4) who is the beneficiary of an employment-based petition with a priority date earlier than August 9, 1978, and who meets certain other requirements outlined in 8 CFR 242.5(a)(2)(vi) (D) or (E). Also, voluntary departure may be granted under 8 CFR 242.5(a)(2)(viii) to a person in whose case the district director has determined there are compelling factors warranting a grant of voluntary departure. A person who has been granted voluntary departure for the reasons set forth in 8 CFR 242.5(a)(2) (v), (vi), or (viii) may be granted permission under 8 CFR 274a.12(c)(12) to be employed for the period of time prior to the date set for voluntary departure, if the person shows an economic need to work. Extensions of voluntary departure and employment authorization may also be requested. Requests for voluntary departure under 8 CFR 242.5(a)(2)(v), (vi), or (viii) may be made to the local Service office having jurisdiction over the applicant's place of residence. There is no application form or fee for requesting voluntary departure for these reasons, although a person requesting employment authorization on the basis of the voluntary departure grant will be required to file Form I–765 and to pay the Form I–765 application fee or to establish eligibility for a fee waiver.

A person who has been placed in deferred action status, an act of administrative convenience to the Government that assigns a lower priority to the alien's removal from the United States, may also request employment authorization under 8 CFR 274a.12(c)(14) if the person shows an economic need to work. There is no application process or fee for placement in deferred action status, although a person requesting employment authorization on the basis of deferred action placement will be required to file Form I–765 and to pay the Form I–765 application fee or to establish eligibility for a fee waiver.

Furthermore, a self-petitioner would not be precluded from requesting the employment authorization benefits of any other provision of 8 CFR 274a.12 under which he or she may qualify.

Other Regulatory Changes

In addition to making regulatory changes necessary to implement the provisions of section 40701 of the Crime Bill, this rule makes necessary grammatical and format changes to ensure consistency and clarity. It also makes technical changes by: (1) amending 8 CFR 103.1(f)(3)(iii) to update regulatory and statutory references; (2) amending 8 CFR 103.1(f)(3)(iii) to eliminate provisions concerning the appeal of a denial of a petition for a Replenishment Agricultural Worker (RAW) under part 210a of the Act, since that program expired at the end of fiscal year 1993 without allowing any such petitions to be filed; (3) revising the headings of 8 CFR 204.1 and 8 CFR 204.2 to more accurately reflect the contents of the sections; (4) correcting a typographical error by replacing ''Form I–30'' with ''Form I–130'' in 8 CFR 204.1(a); (5) removing 8 CFR 204.2(d), which discussed a program created by section 112 of the Immigration Act of 1990 to provide additional visa numbers to spouses and children of legalized aliens that ended September 30, 1994; and (6) amending 8 CFR 205.1 to reflect the requirements of 8 CFR 103.2(a)(7)(ii), which provides an automatic revocation of an approved petition when the remitter fails to pay the filing fee and associated service charge after the check or other financial instrument used to pay the filing fee is returned as not payable.

Family Well-Being

This regulation will enhance family well-being by allowing qualified family members of citizens and lawful permanent residents to self-petition for immigrant classification if they are living in this country. These family members were formerly precluded from obtaining this benefit because the abuser refused to file the necessary relative visa petition.

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based on the ''good cause'' exceptions found at 5 U.S.C. 553 (b)(3)(B) and (d)(3). *Methodist Hospital of Sacramento, et al.,* v. *Shalala,* 38 F.3d 1225 (D.C. Cir. 1994). The reasons and necessity for immediate implementation of this interim rule are as follows: The changes to the Act made by section 40701 of the Crime Bill became effective on January 1, 1995. Immediate implementation of this rule will allow a qualified spouse or child of an abusive citizen or lawful permanent resident to immediately self-petition for immigrant classification. Prompt implementation will also allow a spouse or child who is filing based on the relationship to an abusive lawful permanent resident of the United States to establish a more favorable place on the immigrant visa number waiting list. Qualified self-petitioners are all residing in this country and are persons of good moral character. They have been prevented from obtaining immigrant classification in the past solely because their abusive spouse or parent withdrew or refused to file the necessary immigrant visa petition for them.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities because of the following factors. By permitting certain spouses and children to self-petition for immigrant classification, the rule will allow some individuals residing in the United States to be classified as immigrants based on the relationship to an abusive citizen or lawful permanent resident spouse or child. It will not affect small entities.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

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 rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

The information collection requirements contained in this rule have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Fees, Forms, Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 204

Administrative practice and procedures, Aliens, Employment, Immigration, Petitions.

8 CFR Part 205

Administrative practice and procedures, Aliens, Immigration, Petitions.

8 CFR Part 216

Administrative practice and procedures, Aliens, Nonimmigrants, Passports and visas.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 1487, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

§ 103.1 [Amended]

2. Section 103.1 is amended by:

a. Revising the reference in paragraph (f)(3)(iii)(C) to ''§ 245.2 (a)(4) and (e) of this chapter'' to read ''section 103 of the Act of October 28, 1977'';

b. Revising the reference in paragraph (f)(3)(iii)(K) to ''§ 223.1 of this chapter'' to read ''8 CFR part 223'';

c. Revising the reference in paragraph (f)(3)(iii)(L) to ''§ 223a.4 of this chapter'' to read ''8 CFR part 223'';

d. Revising the reference in paragraph (f)(3)(iii)(X) to ''§ 204.1(b) of this chapter'' to read ''8 CFR 204.3'';

e. Revising the reference in paragraph (f)(3)(iii)(Y) to ''§ 204.1(b)(3) of this chapter'' to read ''8 CFR 204.3'';

f. Revising the reference in paragraph (f)(3)(iii)(FF) to ''as permanent resident under § 245.6 of this chapter'' to read ''of certain Cuban and Haitian nationals under section 202 of the Immigration Reform and Control Act of 1986''; and

g. Removing paragraph (f)(3)(iii)(GG).

3. Section 103.1 is amended by adding a new paragraph (f)(3)(iii)(GG), to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(f) * * *

(3) * * *

(iii) * * *

(GG) A self-petition filed by a spouse or child based on the relationship to an abusive citizen or lawful permanent resident of the United States for classification under section 201(b)(2)(A)(i) of the Act or section 203(a)(2)(A) of the Act;

* * * * *

4. Section 103.2 is amended by adding a new paragraph (b)(2)(iii), to read as follows:

§ 103.2 Applications, petitions, and other documents.

* * * * *

(b) * * *

(2) * * *

(iii) *Evidence provided with a self-petition filed by a spouse or child of abusive citizen or resident.* The Service will consider any credible evidence relevant to a self-petition filed by a qualified spouse or child of an abusive citizen or lawful permanent resident under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), or 204(a)(1)(B)(iii) of the Act. The self-petitioner may, but is not required to, demonstrate that preferred primary or secondary evidence is unavailable. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

* * * * *

5. Section 103.2 is amended by revising the heading of paragraph (b)(17) and by adding three new sentences at the end of paragraph (b)(17), to read as follows:

§ 103.2 Applications, petitions, and other documents.

* * * * *

(b) * * *

(17) *Verifying claimed citizenship or permanent resident status.* * * * If a self-petitioner filing under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), or 204(a)(1)(B)(iii) of the Act is unable to present primary or secondary evidence of the abuser's status, the Service will attempt to electronically verify the abuser's citizenship or immigration status from information contained in Service computerized records. Other Service records may also be reviewed at the discretion of the adjudicating officer. If the Service is unable to identify a record as relating to the abuser, or the record does not establish the abuser's immigration or citizenship status, the self-petition will be adjudicated based on the information submitted by the self-petitioner.

* * * * *

PART 204—IMMIGRANT PETITIONS

6. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255; 8 CFR part 2.

7. Section 204.1 is amended by revising the section heading, and by revising paragraph (a), to read as follows:

§ 204.1 General information about immediate relative and family-sponsored petitions.

(a) *Types of petitions.* Petitions may be filed for an alien's classification as an immediate relative under section 201(b) of the Act or as a preference immigrant under section 203(a) of the Act based on a qualifying relationship to a citizen or lawful permanent resident of the United States, as follows:

(1) A citizen or lawful permanent resident of the United States petitioning under section 204(a)(1)(A)(i) or 204(a)(1)(B)(i) of the Act for a qualifying relative's classification as an immediate relative under section 201(b) of the Act or as a preference immigrant under section 203(a) of the Act must file a Form I–130, Petition for Alien Relative. These petitions are described in § 204.2;

(2) A widow or widower of a United States citizen self-petitioning under section 204(a)(1)(A)(ii) of the Act as an immediate relative under section 201(b) of the Act must file a Form I–360, Petition for Amerasian, Widow, or Special Immigrant. These petitions are described in § 204.2;

(3) A spouse or child of an abusive citizen or lawful permanent resident of the United States self-petitioning under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), or 204(a)(1)(B)(iii) of the Act for classification as an immediate relative under section 201(b) of the Act or as a preference immigrant under section 203(a) of the Act must file a Form I–360, Petition for Amerasian,

Widow, or Special Immigrant. These petitions are described in § 204.2;

(4) A citizen of the United States seeking advanced processing of an orphan petition must file Form I–600A, Application for Advanced Processing of Orphan Petition. A citizen of the United States petitioning under section 204(a)(1)(A)(i) of the Act for classification of an orphan described in section 101(b)(1)(F) of the Act as an immediate relative under section 201(b) of the Act must file Form I–600, Petition to Classify Orphan as an Immediate Relative. These applications and petitions are described in § 204.3; and

(5) Any person filing a petition under section 204(f) of the Act as, or on behalf of, an Amerasian for classification as an immediate relative under section 201(b) of the Act or as a preference immigrant under section 203(a)(1) or 203(a)(3) of the Act must file a Form I–360, Petition for Amerasian, Widow, or Special Immigrant. These petitions are described in § 204.4.

* * * * *

9. Section 204.1 is amended by revising paragraph (e)(1), to read as follows:

§ 204.1 General information about immediate relative and family-sponsored petitions.

* * * * *

(e) * * *

(1) *Petitioner or self-petitioner residing in the United States.* The petition or self-petition must be filed with the Service office having jurisdiction over the place where the petitioner or self-petitioner is residing. When the petition or self-petition is accompanied by an application for adjustment of status, the petition or self-petition may be filed with the Service office having jurisdiction over the beneficiary's or self-petitioner's place of residence.

* * * * *

9. Section 204.1 is amended by adding two new sentences at the end of paragraph (e)(2), to read as follows:

§ 204.1 General information about immediate relative and family-sponsored petitions.

* * * * *

(e) * * *

(2) * * * An overseas Service officer may not accept or approve a self-petition filed by the spouse or child of an abusive citizen or lawful permanent resident of the United States under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), or 204(a)(1)(B)(iii) of the Act. These self-petitions must be filed with the Service office in the United States having jurisdiction over the self-petitioner's place of residence in the United States.

* * * * *

10. Section 204.1 is amended by adding two new sentences at the end of paragraph (e)(3), to read as follows:

§ 204.1 General information about immediate relative and family-sponsored petitions.

* * * * *

(e) * * *

(3) * * * A consular official may not accept or approve a self-petition filed by the spouse or child of an abusive citizen or lawful permanent resident of the United States under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), or 204(a)(1)(B)(iii) of the Act. These self-petitions must be filed with the Service office in the United States having jurisdiction over the self-petitioner's place of residence in the United States.

* * * * *

11. Section 204.1 is amended by adding three new sentences at the end of paragraph (f)(1), to read as follows:

§ 204.1 General information about immediate relative and family-sponsored petitions.

* * * * *

(f) * * *

(1) * * * The Service will consider any credible evidence relevant to a self-petition filed by a qualified spouse or child of an abusive citizen or lawful permanent resident under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), or 204(a)(1)(B)(iii) of the Act. The self-petitioner may, but is not required to, demonstrate that preferred primary or secondary evidence is unavailable. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

* * * * *

12. Section 204.1 is amended by adding a new paragraph (g)(3), to read as follows:

§ 204.1 General information about immediate relative and family-sponsored petitions.

* * * * *

(g) * * *

(3) *Evidence submitted with a self-petition.* If a self-petitioner filing under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), or 204(a)(1)(B)(iii) of the Act is unable to present primary or secondary evidence of the abuser's status, the Service will attempt to electronically verify the abuser's citizenship or immigration status from information contained in Service computerized records. Other Service records may also be reviewed at the discretion of the adjudicating officer. If the Service is unable to identify a record as relating to the abuser or the record does not establish the abuser's immigration or citizenship status, the self-petition will be adjudicated based on the information submitted by the self-petitioner.

* * * * *

13. Section 204.2 is amended by:

a. Revising the section heading;

b. Removing paragraph (d);

c. Redesignating paragraph (c) as paragraph (d); and by

d. Adding a new paragraph (c), to read as follows:

§ 204.2 Petitions for relatives, widows and widowers, and abused spouses and children.

* * * * *

(c) *Self-petition by spouse of abusive citizen or lawful permanent resident.* (1) *Eligibility.* (i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immediate relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is that parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character;

(G) Is a person whose deportation would result in extreme hardship to himself, herself, or his or her child; and

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

(ii) *Legal status of the marriage.* The self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service. A spousal self-petition must be denied if the marriage to the abuser legally ended through annulment, death, or divorce before that time. After the self-petition has been properly filed, the legal termination of the marriage will have no effect on the decision made on the self-

petition. The self-petitioner's remarriage, however, will be a basis for the denial of a pending self-petition.

(iii) *Citizenship or immigration status of the abuser.* The abusive spouse must be a citizen of the United States or a lawful permanent resident of the United States when the petition is filed and when it is approved. Changes in the abuser's citizenship or lawful permanent resident status after the approval will have no effect on the self-petition. A self-petition approved on the basis of a relationship to an abusive lawful permanent resident spouse will not be automatically upgraded to immediate relative status. The self-petitioner would not be precluded, however, from filing a new self-petition for immediate relative classification after the abuser's naturalization, provided the self-petitioner continues to meet the self-petitioning requirements.

(iv) *Eligibility for immigrant classification.* A self-petitioner is required to comply with the provisions of section 204(c) of the Act, section 204(g) of the Act, and section 204(a)(2) of the Act.

(v) *Residence.* A self-petition will not be approved if the self-petitioner is not residing in the United States when the self-petition is filed. The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser in the United States in the past.

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase ''was battered by or was the subject of extreme cruelty'' includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident spouse, must have been perpetrated against the self-petitioner or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

(viii) *Extreme hardship.* The Service will consider all credible evidence of extreme hardship submitted with a self-petition, including evidence of hardship arising from circumstances surrounding the abuse. The extreme hardship claim will be evaluated on a case-by-case basis after a review of the evidence in the case. Self-petitioners are encouraged to cite and document all applicable factors, since there is no guarantee that a particular reason or reasons will result in a finding that deportation would cause extreme hardship. Hardship to persons other than the self-petitioner or the self-petitioner's child cannot be considered in determining whether a self-petitioning spouse's deportation would cause extreme hardship.

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

(2) *Evidence for a spousal self-petition.* (i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of both the self-petitioner and the abuser. If the self-petition is based on a claim that the self-petitioner's child was battered or subjected to extreme cruelty committed by the citizen or lawful permanent resident spouse, the self-petition should also be accompanied by the child's birth certificate or other evidence showing the relationship between the self-petitioner and the abused child.

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together in the United States. One or more documents may also be submitted showing that the self-petitioner is residing in the United States when the self-petition is filed. Employment records, utility receipts, school records, hospital or medical records, birth certificates of children born in the United States, deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to

establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

(vi) *Extreme hardship.* Evidence of extreme hardship may include affidavits, birth certificates of children, medical reports, protection orders and other court documents, police reports, and other relevant credible evidence.

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

(3) *Decision on and disposition of the petition.* (i) *Petition approved.* If the self-petitioning spouse will apply for adjustment of status under section 245 of the Act, the approved petition will be retained by the Service. If the self-petitioner will apply for an immigrant visa abroad, the approved self-petition will be forwarded to the Department of State's National Visa Center.

(ii) *Notice of intent to deny.* If the preliminary decision on a properly filed self-petition is adverse to the self-petitioner, the self-petitioner will be provided with written notice of this fact and offered an opportunity to present additional information or arguments before a final decision is rendered. If the adverse preliminary decision is based on derogatory information of which the self-petitioner is unaware, the self-petitioner will also be offered an opportunity to rebut the derogatory information in accordance with the provisions of 8 CFR 103.2(b)(16).

(iii) *Petition denied.* If the self-petition is denied, the self-petitioner will be notified in writing of the reasons for the denial and of the right to appeal the decision.

(4) *Derivative beneficiaries.* A child accompanying or following-to-join the self-petitioning spouse may be accorded the same preference and priority date as the self-petitioner without the necessity of a separate petition, if the child has not been classified as an immigrant based on his or her own self-petition. A derivative child who had been included in a parent's self-petition may later file a self-petition, provided the child meets the self-petitioning requirements. A child who has been classified as an immigrant based on a petition filed by the abuser or another relative may also be derivatively included in a parent's self-petition. The derivative child must be unmarried, less than 21 years old, and otherwise qualify as the self-petitioner's child under section 101(b)(1)(F) of the Act until he or she becomes a lawful permanent resident based on the derivative classification.

(5) *Name change.* If the self-petitioner's current name is different than the name shown on the documents, evidence of the name change (such as the petitioner's marriage certificate, legal document showing name change, or other similar evidence) must accompany the self-petition.

* * * * *

14. Section 204.2 is amended by redesignating paragraphs (e), (f), (g), and (h), as paragraphs (f), (g), (h), and (i), respectively; and by adding a new paragraph (e), to read as follows:

§ 204.2 Petitions for relatives, widows and widowers, and abused spouses and children.

* * * * *

(e) *Self-petition by child of abusive citizen or lawful permanent resident.* (1) *Eligibility.* (i) A child may file a self-petition under section 204(a)(1)(A)(iv) or 204(a)(1)(B)(iii) of the Act if he or she:

(A) Is the child of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident parent;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident parent while residing with that parent;

(F) Is a person of good moral character; and

(G) Is a person whose deportation would result in extreme hardship to himself or herself.

(ii) *Parent-child relationship to the abuser.* The self-petitioning child must be unmarried, less than 21 years of age, and otherwise qualify as the abuser's child under the definition of child contained in section 101(b)(1) of the Act when the petition is filed and when it is approved. Termination of the abuser's parental rights or a change in legal custody does not alter the self-petitioning relationship provided the child meets the requirements of section 101(b)(1) of the Act.

(iii) *Citizenship or immigration status of the abuser.* The abusive parent must be a citizen of the United States or a lawful permanent resident of the United States when the petition is filed and when it is approved. Changes in the abuser's citizenship or lawful permanent resident status after the approval will have no effect on the self-petition. A self-petition approved on the basis of a relationship to an abusive lawful permanent resident will not be automatically upgraded to immediate relative status. The self-petitioning child would not be precluded, however, from filing a new self-petition for immediate relative classification after the abuser's naturalization, provided the self-petitioning child continues to meet the self-petitioning requirements.

(iv) *Eligibility for immigrant classification.* A self-petitioner is required to comply with the provisions of section 204(c) of the Act, section 204(g) of the Act, and section 204(a)(2) of the Act.

(v) *Residence.* A self-petition will not be approved if the self-petitioner is not residing in the United States when the self-petition is filed. The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser in the United States in the past.

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase ''was

battered by or was the subject of extreme cruelty'' includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident parent, must have been perpetrated against the self-petitioner, and must have taken place while the self-petitioner was residing with the abuser.

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

(viii) *Extreme hardship.* The Service will consider all credible evidence of extreme hardship submitted with a self-petition, including evidence of hardship arising from circumstances surrounding the abuse. The extreme hardship claim will be evaluated on a case-by-case basis after a review of the evidence in the case. Self-petitioners are encouraged to cite and document all applicable factors, since there is no guarantee that a particular reason or reasons will result in a finding that deportation would cause extreme hardship. Hardship to persons other than the self-petitioner cannot be considered in determining whether a self-petitioning child's deportation would cause extreme hardship.

(2) *Evidence for a child's self-petition.* (i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

(ii) *Relationship.* A self-petition filed by a child must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of the relationship between:

(A) The self-petitioning child and an abusive biological mother is the self-petitioner's birth certificate issued by civil authorities;

(B) A self-petitioning child who was born in wedlock and an abusive biological father is the child's birth certificate issued by civil authorities, the marriage certificate of the child's parents, and evidence of legal termination of all prior marriages, if any;

(C) A legitimated self-petitioning child and an abusive biological father is the child's birth certificate issued by civil authorities, and evidence of the child's legitimation;

(D) A self-petitioning child who was born out of wedlock and an abusive biological father is the child's birth certificate issued by civil authorities showing the father's name, and evidence that a bona fide parent-child relationship has been established between the child and the parent;

(E) A self-petitioning stepchild and an abusive stepparent is the child's birth certificate issued by civil authorities, the marriage certificate of the child's parent and the stepparent showing marriage before the stepchild reached 18 years of age, and evidence of legal termination of all prior marriages of either parent, if any; and

(F) An adopted self-petitioning child and an abusive adoptive parent is an adoption decree showing that the adoption took place before the child reached 16 years of age, and evidence that the child has been residing with and in the legal custody of the abusive adoptive parent for at least 2 years.

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together in the United States. One or more documents may also be submitted showing that the self-petitioner is residing in the United States when the self-petition is filed. Employment records, school records, hospital or medical records, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other types of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuse may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in the foreign country in which he or she resided for six or more

months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character. A child who is less than 14 years of age is presumed to be a person of good moral character and is not required to submit affidavits of good moral character, police clearances, criminal background checks, or other evidence of good moral character.

(vi) *Extreme hardship.* Evidence of extreme hardship may include affidavits, medical reports, protection orders and other court documents, police reports, and other relevant credible evidence.

(3) *Decision on and disposition of the petition.* (i) *Petition approved.* If the self-petitioning child will apply for adjustment of status under section 245 of the Act, the approved petition will be retained by the Service. If the self-petitioner will apply for an immigrant visa abroad, the approved self-petition will be forwarded to the Department of State's National Visa Center.

(ii) *Notice of intent to deny.* If the preliminary decision on a properly filed self-petition is adverse to the self-petitioner, the self-petitioner will be provided with written notice of this fact and offered an opportunity to present additional information or arguments before a final decision is rendered. If the adverse preliminary decision is based on derogatory information of which the self-petitioner is unaware, the self-petitioner will also be offered an opportunity to rebut the derogatory information in accordance with the provisions of 8 CFR 103.2(b)(16).

(iii) *Petition denied.* If the self-petition is denied, the self-petitioner will be notified in writing of the reasons for the denial and of the right to appeal the decision.

(4) *Derivative beneficiaries.* A child of a self-petitioning child is not eligible for derivative classification and must have a petition filed on his or her behalf if seeking immigrant classification.

(5) *Name change.* If the self-petitioner's current name is different than the name shown on the documents, evidence of the name change (such as the petitioner's marriage certificate, legal document showing the name change, or other similar evidence) must accompany the self-petition.

* * * * *

§ 204.2 [Amended]

15. Section 204.2 is amended in newly designated paragraph (g)(2)(iv) by revising the reference to ''paragraphs (f)(2)(ii) and (f)(2)(iii) of this section'' to read ''paragraphs (g)(2)(ii) and (g)(2)(iii) of this section''.

16. Section 204.2 is amended by adding five new sentences at the end of the newly redesignated paragraph (h)(2), to read as follows:

§ 204.2 Petitions for relatives, widows and widowers, and abused spouses and children.

* * * * *

(h) * * *

(2) * * * A self-petition filed under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), 204(a)(1)(B)(iii) of the Act based on the relationship to an abusive citizen or lawful permanent resident of the United States will not be regarded as a reaffirmation or reinstatement of a petition previously filed by the abuser. A self-petitioner who has been the beneficiary of a visa petition filed by the abuser to accord the self-petitioner immigrant classification as his or her spouse or child, however, will be allowed to transfer the visa petition's priority date to the self-petition. The visa petition's priority date may be assigned to the self-petition without regard to the current validity of the visa petition. The burden of proof to establish the existence of and the filing date of the visa petition lies with the self-petitioner, although the Service will attempt to verify a claimed filing through a search of the Service's computerized records or other records deemed appropriate by the adjudicating officer. A new self-petition filed under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), or 204(a)(1)(B)(iii) of the Act will not be regarded as a reaffirmation or reinstatement of the original self-petition unless the prior and the subsequent self-petitions are based on the relationship to the same abusive citizen or lawful permanent resident of the United States.

* * * * *

17. Section 204.2 is amended by adding a new sentence at the end of the newly redesignated paragraph (i)(3), to read as follows:

§ 204.2 Petitions for relatives, widows and widowers, and abused spouses and children.

* * * * *

(i) * * *

(3) * * * A self-petition filed under section 204(a)(1)(B)(ii) or 204(a)(1)(B)(iii) of the Act based on the relationship to an abusive lawful permanent resident of the United States for classification under section 203(a)(2) of the Act will not be affected by the abuser's naturalization and will not be automatically converted to a petition for immediate relative classification.

PART 205—REVOCATION OF APPROVAL OF PETITIONS

18. The authority citation for part 205 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1155, 1182, and 1186a.

19. Section 205.1 is revised to read as follows:

§ 205.1 Automatic revocation.

(a) *Reasons for automatic revocation.* The approval of a petition or self-petition made under section 204 of the Act and in accordance with part 204 of this chapter is revoked as of the date of approval:

(1) If the Secretary of State shall terminate the registration of the beneficiary pursuant to the provisions of section 203(e) of the Act before October 1, 1991, or section 203(g) of the Act on or after October 1, 1994;

(2) If the filing fee and associated service charge are not paid within 14 days of the notification to the remitter that his or her check or other financial instrument used to pay the filing fee has been returned as not payable; or

(3) If any of the following circumstances occur before the beneficiary's or self-petitioner's journey to the United States commences or, if the beneficiary or self-petitioner is an applicant for adjustment of status to that of a permanent resident, before the decision on his or her adjustment application becomes final:

(i) *Immediate relative and family-sponsored petitions, other than Amerasian petitions.* (A) Upon written notice of withdrawal filed by the petitioner or self-petitioner with any officer of the Service who is authorized to grant or deny petitions.

(B) Upon the death of the beneficiary or the self-petitioner.

(C) Upon the death of the petitioner, unless the Attorney General in his or her discretion determines that for humanitarian reasons revocation would be inappropriate.

(D) Upon the legal termination of the marriage when a citizen or lawful permanent resident of the United States has petitioned to accord his or her spouse immediate relative or family-sponsored preference immigrant classification under section 201(b) or section 203(a)(2) of the Act. The

approval of a spousal self-petition based on the relationship to an abusive citizen or lawful permanent resident of the United States filed under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act, however, will not be revoked solely because of the termination of the marriage to the abuser.

(E) Upon the remarriage of the spouse of an abusive citizen or lawful permanent resident of the United States when the spouse has self-petitioned under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for immediate relative classification under section 201(b) of the Act or for preference classification under section 203(a)(2) of the Act.

(F) Upon a child reaching the age of 21, when he or she has been accorded immediate relative status under section 201(b) of the Act. A petition filed on behalf of a child under section 204(a)(1)(A)(i) of the Act or a self-petition filed by a child of an abusive United States citizen under section 204(a)(1)(A)(iv) of the Act, however, will remain valid for the duration of the relationship to accord preference status under section 203(a)(1) of the Act if the beneficiary remains unmarried, or to accord preference status under section 203(a)(3) of the Act if he or she marries.

(G) Upon the marriage of a child, when he or she has been accorded immediate relative status under section 201(b) of the Act. A petition filed on behalf of the child under section 204(a)(1)(A)(i) of the Act or a self-petition filed by a child of an abusive United States citizen under section 204(a)(1)(A)(iv) of the Act, however, will remain valid for the duration of the relationship to accord preference status under section 203(a)(3) of the Act if he or she marries.

(H) Upon the marriage of a person accorded preference status as a son or daughter of a United States citizen under section 203(a)(1) of the Act. A petition filed on behalf of the son or daughter, however, will remain valid for the duration of the relationship to accord preference status under section 203(a)(3) of the Act.

(I) Upon the marriage of a person accorded status as a son or daughter of a lawful permanent resident alien under section 203(a)(2) of the Act.

(J) Upon legal termination of the petitioner's status as an alien admitted for lawful permanent residence in the United States unless the petitioner became a United States citizen. The provisions of 8 CFR 204.2(i)(3) shall apply if the petitioner became a United States citizen.

(ii) *Petition for Pub. L. 97–359 Amerasian.* (A) Upon formal notice of withdrawal filed by the petitioner with the officer who approved the petition.

(B) Upon the death of the beneficiary.

(C) Upon the death or bankruptcy of the sponsor who executed Form I–361, Affidavit of Financial Support and Intent to Petition for Legal Custody for Pub. L. 97–359 Amerasian. In that event, a new petition may be filed in the beneficiary's behalf with the documentary evidence relating to sponsorship and, in the case of a beneficiary under 18 years of age, placement. If the new petition is approved, it will be given the priority date of the previously approved petition.

(D) Upon the death or substitution of the petitioner if other than the beneficiary or sponsor. However, if the petitioner dies or no longer desires or is able to proceed with the petition, and another person 18 years of age or older, an emancipated minor, or a corporation incorporated in the United States desires to be substituted for the deceased or original petitioner, a written request may be submitted to the Service or American consular office where the petition is located to reinstate the petition and restore the original priority date.

(E) Upon the beneficiary's reaching the age of 21 when the beneficiary has been accorded classification under section 201(b) of the Act. Provided that all requirements of section 204(f) of the Act continue to be met, however, the petition is to be considered valid for purposes of according the beneficiary preference classification under section 203(a)(1) of the Act if the beneficiary remains unmarried or under section 203(a)(3) if the beneficiary marries.

(F) Upon the beneficiary's marriage when the beneficiary has been accorded classification under section 201(b) or section 203(a)(1) of the Act. Provided that all requirements of section 204(f) of the Act continue to be met, however, the petition is to be considered valid for purposes of according the beneficiary preference classification under section 203(a)(3) of the Act.

(iii) *Petitions under section 203(b), other than special immigrant juvenile petitions.* (A) Upon invalidation pursuant to 20 CFR Part 656 of the labor certification in support of the petition.

(B) Upon the death of the petitioner or beneficiary.

(C) Upon written notice of withdrawal filed by the petitioner, in employment-based preference cases, with any officer of the Service who is authorized to grant or deny petitions.

(D) Upon termination of the employer's business in an employment-based preference case under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) of the Act.

(iv) *Special immigrant juvenile petitions.* Unless the beneficiary met all of the eligibility requirements as of November 29, 1990, and the petition requirements as of November 29, 1990, and the petition for classification as a special immigrant juvenile was filed before June 1, 1994, or unless the change in circumstances resulted from the beneficiary's adoption or placement in a guardianship situation:

(A) Upon the beneficiary reaching the age of 21;

(B) Upon the marriage of the beneficiary;

(C) Upon the termination of the beneficiary's dependency upon the juvenile court;

(D) Upon the termination of the beneficiary's eligibility for long-term foster care; or

(E) Upon the determination in administrative or judicial proceedings that it is in the beneficiary's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or of his or her parent or parents.

(b) *Notice.* When it shall appear to the director that the approval of a petition has been automatically revoked, he or she shall cause a notice of such revocation to be sent promptly to the consular office having jurisdiction over the visa application and a copy of such notice to be mailed to the petitioner's last known address.

20. Section 205.2 is amended by revising paragraph (b) and adding new paragraphs (c) and (d), to read as follows:

§ 205.2 Revocation on notice.

* * * * *

(b) *Notice of intent.* Revocation of the approval of a petition of self-petition under paragraph (a) of this section will be made only on notice to the petitioner or self-petitioner. The petitioner or self-petitioner must be given the opportunity to offer evidence in support of the petition or self-petition and in opposition to the grounds alleged for revocation of the approval.

(c) *Notification of revocation.* If, upon reconsideration, the approval previously granted is revoked, the director shall provide the petitioner or the self-petitioner with a written notification of the decision that explains the specific reasons for the revocation. The director shall notify the consular officer having jurisdiction over the visa application, if applicable, of the revocation of an approval.

(d) *Appeals.* The petitioner or self-petitioner may appeal the decision to

revoke the approval within 15 days after the service of notice of the revocation. The appeal must be filed as provided in part 3 of this chapter, unless the Associate Commissioner for Examinations exercises appellate jurisdiction over the revocation under part 103 of this chapter. Appeals filed with the Associate Commissioner for Examinations must meet the requirements of part 103 of this chapter.

PART 216—CONDITIONAL BASIS OF LAWFUL PERMANENT RESIDENCE STATUS

21. The authority citation for part 216 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1154, 1184, 1186a, 1186b, and 8 CFR part 2.

22. Section 216.1 is amended by adding a new sentence at the end of the section, to read as follows:

§ 216.1 Definition of conditional permanent resident.

* * * The conditions of section 216 of the Act shall not apply to lawful permanent resident status based on a self-petitioning relationship under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(b)(ii), or 204(a)(1)(B)(iii) of the Act or based on eligibility as the derivative child of a self-petitioning spouse under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act, regardless of the date on which the marriage to the abusive citizen or lawful permanent resident occurred.

Dated: March 1, 1996.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 96–7219 Filed 3–25–96; 8:45 am]

BILLING CODE 4410–10–M

FEDERAL RESERVE SYSTEM

12 CFR Part 268

[Docket No. R–0797]

Rules Regarding Equal Opportunity; Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; correcting amendments.

SUMMARY: This document contains technical corrections to the final rule that was published April 6, 1994 (59 FR 16096). The rule sets forth the requirements, policies and procedures with regard to discrimination in employment, and in agency programs and activities, at the Board of Governors of the Federal Reserve System.

EFFECTIVE DATE: March 26, 1996.

FOR FURTHER INFORMATION CONTACT: J. Mills Williams, Senior Attorney (202/452–3701), Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC, 20551. For users of Telecommunications Device for the Deaf (TDD) only, please contact Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of these corrections, revised an interim rule that was subject to public comment.

Need for Correction

As published, the final rule contained three technical, non-substantive errors that may prove to be misleading and are in need of clarification.

List of Subjects in 12 CFR Part 268

Administrative practice and procedure, Age, Civil rights, Equal employment opportunity, Federal buildings and facilities, Federal Reserve System, Government employees, Individuals with disabilities, Religious discrimination, Sex discrimination, Wages.

Accordingly, 12 CFR Part 268 is corrected by making the following correcting amendments:

PART 268—RULES REGARDING EQUAL OPPORTUNITY

1. The authority citation for Part 268 continues to read as follows:

Authority: 12 U.S.C. 244 and 248 (i), (k) and (l).

§ 268.301 [Corrected]

2. In § 268.301, paragraph (c)(3), the cite ''§ 268.209(a)(8)'' is revised to read ''§ 268.209(b)(8)''.

§ 268.305 [Corrected]

3. In § 268.305, paragraph (c)(1), the cite ''§ 268.202(e)(3)'' is revised to read ''§ 268.202(f)(3)''.

§ 268.506 [Corrected]

4. In § 268.506, remove the cite ''(29 U.S.C. 225)'' at the end of the first sentence.

By order of the Board of Governors of the Federal Reserve System under delegated authority, March 20, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–7174 Filed 3–25–96; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–21; Amendment 39–9547; AD 96–06–10]

Airworthiness Directives; AlliedSignal, Inc. LTS101 Series Turboshaft Engines Installed on Eurocopter France Model AS–350D and SA–366G1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to AlliedSignal, Inc. (formerly Textron Lycoming) LTS101 series turboshaft engines installed on Eurocopter France (formerly Aerospatiale) Model AS–350D and SA–366G1 helicopters, that requires incorporation of design modifications to the power turbine (PT) rotor. This amendment is prompted by reports of PT disk failures after No. 3 bearing failures. The actions specified by this AD are intended to prevent an uncontained engine failure due to a PT disk failure.

DATES: Effective May 28, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 28, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from AlliedSignal Engines, 550 Main Street, Stratford, CT 06497. 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: Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7148, 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 AlliedSignal, Inc. (formerly Textron Lycoming) LTS101 series turboshaft engines installed on Eurocopter France (formerly Aerospatiale) Model AS–350D and SA–366G1 helicopters was published in the

Federal Register on June 30, 1995 (60 FR 21053). That action proposed to require incorporation of a modified power turbine (PT) rotor retention system at the next shop visit after the effective date of this AD, but not later than April 30, 1996, in accordance with Textron Lycoming Service Bulletin (SB) No. LTS101A–72–50–0134, Revision 1, dated June 17, 1991, and SB No. LTS101B–72–50–0128, Revision 1, dated June 17, 1991.

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

The commenter states that the instructions for installation of the PT retention system should be revised to require installation of two parts, inadvertently omitted but necessary to enable the pneumatic portion of the PT retention system. These parts consist of a tee-fitting to replace an existing elbow fitting in the main fuel control, and a pressurization line. The FAA concurs, and has revised the accomplishment instructions of the final rule to refer to later revisions of the applicable SB's, which reflect installation of these additional parts. Consequently, the FAA has extended the compliance timetable for the final rule in order to provide sufficient opportunity for installation of the parts, and to ensure parts availability. The FAA has determined that installation of the additional parts will not have a substantial additional impact on accomplishment of the requirements of this AD.

Since publication of the NPRM, the manufacturer has issued the following revisions to the SB's, which are referenced in this final rule: AlliedSignal Engines SB No. LTS101A–72–50–0134, Revision 2, dated August 15, 1995; AlliedSignal Engines SB No. LTS101B–72–50–0128, Revision 2, dated August 15, 1995; and AlliedSignal Engines SB No. LTS101A–73–20–0166, Revision 2, dated August 1, 1995.

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 with the changes described previously.

The FAA estimates that 20 engines installed on aircraft of U.S. registry will be affected by the requirement to install the improved power turbine rotor assembly and the power turbine retention system required by this AD, that it will take approximately 10 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $44,400 per engine. Based on these figures, the cost impact to install the improved power turbine rotor assembly and the power turbine retention system required by this AD on U.S. operators is estimated to be $900,000. The FAA estimates that 60 engines installed on aircraft of U.S. registry have previously installed the improved power turbine rotor assembly and the power turbine retention system, in addition to the 20 engines in the paragraph above. Therefore, a total of 80 engines will be affected by the requirement to enable the pneumatic portion of the PT retention system by installing the tee-fitting and pressurization line. The FAA estimates that it will take approximately 2.5 work hours per engine to accomplish the required action. Required parts will cost approximately $385 per engine. Based on these figures, the total cost impact of installing the tee-fitting and pressurization line required by the AD on U.S. operators is estimated to be $42,800. Therefore, the revised total cost impact of this AD on all U.S. operators is estimated to be $942,800.

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 adding the following new airworthiness directive:

96–06–10 AlliedSignal, Inc.: Amendment 39–9547. Docket 95–ANE–21.

Applicability: AlliedSignal, Inc. (formerly Textron Lycoming) Models LTS101–600A–2 and –600A–3 turboshaft engines installed on Eurocopter France (formerly Aerospatiale) Model AS–350D helicopters; and LTS101–750B–2 turboshaft engines installed on Eurocopter France Model SA–366G1 helicopters.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncontained engine failure due to power turbine (PT) disk failure, accomplish the following at the next shop visit after the effective date of this airworthiness directive (AD) when the PT rotor is removed, but not later than July 1, 1996:

(a) For LTS101–600A–2 and –600A–3 turboshaft engines installed on Eurocopter France (formerly Aerospatiale) Model AS–350D helicopters, incorporate improved PT rotor retention system modifications in accordance with Section II., Accomplishment Instructions, Paragraphs A. through AT. of AlliedSignal Engines Service Bulletin (SB) No. LTS101A–72–50–0134, Revision 2, dated August 15, 1995, and concurrently replace elbow fitting in fuel control governor orifice cover Py port with tee-fitting assembly, P/N 2543854, in accordance with Section II., Accomplishment Instructions, Paragraphs C. (5) through C. (7) of AlliedSignal Engines SB No. LTS101A–73–20–166, Revision 2, dated August 1, 1995.

(b) For LTS101–750B–2 turboshaft engines installed on Eurocopter France Model SA–

366G1 helicopters, incorporate improved PT rotor retention system modifications in accordance with Section II., Accomplishment Instructions, of AlliedSignal Engines SB No. LTS101B–72–50–0128, Revision 2, dated August 15, 1995.

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

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

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

(f) The modification of the PT rotor retention system shall be done in accordance with the following AlliedSignal Engines SB's:

Document No.	Pages	Revision	Date
LTS101A72–50–0134 ..... Total pages: 11.	1–11	2	Aug. 15, 1995.
LTS101B72–50–0128 ..... Total pages: 11.	1–11	2	Aug. 15, 1995.
LTS101A73–20–0166 ..... Total pages: 11.	1–6	2	Aug. 1, 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 AlliedSignal Engines, 550 Main Street, Stratford, CT 06497. 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 28, 1996.

Issued in Burlington, Massachusetts, on March 11, 1996.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–7141 Filed 3–25–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–ANE–09; Amendment 39–9548; AD 96–06–11]

Airworthiness Directives; AlliedSignal Inc. TPE331 Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain AlliedSignal Inc. (formerly Garrett Engine Division) TPE331 series turboprop engines, that establishes cyclic retirement lives for certain compressor components. This amendment is prompted by manufacturer's engine testing and analysis that indicate that if these compressor components continue in service without an established retirement life, accumulative cyclic effects may result in a fatigue failure. The actions specified by this AD are intended to prevent fatigue failure of engine compressor components and an inflight engine shutdown.

DATES: Effective May 28, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 28, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from AlliedSignal Aerospace, Data Distribution, M/S 64–03/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. 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: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (310) 627–5246; 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 AlliedSignal Inc. (formerly Garrett Engine Division) Models TPE331–14A, –14B, –14F, and –15AW turboprop engines was published in the Federal Register on June 19, 1995 (60 FR 31932). That action proposed to establish cyclic retirement lives for main shouldered shafts (tieshafts) and forward coupling shafts (stub shafts) in accordance with the following AlliedSignal Engines service documents: Alert Service Bulletins (ASB's): No. TPE331–A72–7128, dated June 10, 1994, No. TPE331–A72–7129, dated June 10, 1994, and No. TPE331–A72–7522, dated February 17, 1995, that describe main shouldered shaft (tieshaft) cyclic life limits; and Service Bulletins (SB's) No. TPE331–72–7130, dated June 17, 1994, No. TPE331–72–7131, dated June 17, 1994, and No. TPE331–72–7523, dated February 17, 1995, that describe forward coupling shaft (stub shaft) cyclic life limits.

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.

There are approximately 200 engines of the affected design in the worldwide fleet. The FAA estimates that 150 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 80 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $22,000 per engine for engines where tieshafts and stub shafts are not serviceable. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,020,000.

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 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

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

96–06–11 AlliedSignal Inc.: Amendment 39–9548. Docket 95–ANE–09.

Applicability: AlliedSignal Inc. (formerly Garrett Engine Division) Models TPE331–14A, –14B, –14F, and –15AW turboprop engines, installed on but not limited to the following aircraft: Piper Model PA–42–1000 and Grumman Model TS–2A (modified in accordance with Supplemental Type Certificate SA4837NM).

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue failure of engine compressor components and an inflight engine shutdown, accomplish the following:

(a) For main shouldered shafts (tieshafts), Part Number (P/N) 3105102–1, initiate a life limited part log card and remove from service in accordance with the following schedule and the following AlliedSignal Inc. Alert Service Bulletins (ASB's):

(1) Determine cycles in service (CIS) for the main shouldered shafts (tieshafts) as follows:

(i) For main shouldered shafts (tieshafts) installed in TPE331–14A and –14B engines, in accordance with ASB No. TPE331–A72–7128, dated June 10, 1994.

(ii) For main shouldered shafts (tieshafts) installed in TPE331–14F engines, in accordance with ASB No. TPE331–A72–7129, dated June 10, 1994.

(iii) For main shouldered shafts (tieshafts) installed in TPE331–15AW engines, in accordance with ASB No. TPE331–A72–7522, dated February 17, 1995.

(2) For main shouldered shafts (tieshafts) with greater than 5,600 CIS on the effective date of this airworthiness directive (AD), or if operating hours or cycles are unknown, remove from service within 400 CIS after the effective date of this AD.

(3) For main shouldered shafts (tieshafts) with 5,600 or less CIS on the effective date of this AD, remove from service prior to accumulating 6,000 CIS.

(b) For forward coupling shafts (stub shafts), P/N 3104281–2, initiate a life limited part log card, identify the P/N, serialize the forward coupling shaft (stub shaft), at the next major periodic inspection or complete disassembly of the compressor module after the effective date of this AD, whichever occurs first, in accordance with the following AlliedSignal Inc. Service Bulletins (SB's):

(1) For forward coupling shafts (stub shafts) installed in TPE331–14A and –14B engines, in accordance with SB No. TPE331–72–7130, dated June 17, 1994.

(2) For forward coupling shafts (stub shafts) installed in TPE331–14F engines, in accordance with SB No. TPE331–72–7131, dated June 17, 1994.

(3) For forward coupling shafts (stub shafts) installed in TPE331–15AW engines, in accordance with SB No. TPE331–72–7523, dated February 17, 1995.

(4) Remove from service forward coupling shafts (stub shafts) prior to accumulating 20,000 CIS.

Note: For guidance on the destruction or marking of parts no longer serviceable for aviation use, see Advisory Circular 21–38, dated July 5, 1994.

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

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

(e) The actions required by this AD shall be done in accordance with the following AlliedSignal Engines service documents:

Document No.	Pages	Revision	Date
ASB No. TPE331–A72–7128 Total Pages: 4.	1–4	Original	June 10, 1994.
ASB No. TPE331–A72–7129 Total Pages: 4.	1–4	Original	June 10, 1994.
ASB No. TPE331–A72–7522 Total Pages: 2.	1–2	Original	Feb. 17, 1995.
SB No. TPE331–72–7130 Total Pages: 6.	1–6	Original	June 17, 1994.
SB No. TPE331–72–7131 Total Pages: 6.	1–6	Original	June 17, 1994.
SB No. TPE331–72–7523 Total pages: 6.	1–6	Original	Feb. 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 AlliedSignal Aerospace, Data Distribution, M/S 6403/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. 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.

(f) This amendment becomes effective on May 28, 1996.

Issued in Burlington, Massachusetts, on March 12, 1996.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–7135 Filed 3–25–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 95–NM–99–AD; Amendment 39–9551; AD 96–07–02]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires inspections to verify the correct operation of the main landing gear (MLG) downlock actuators, and replacement of any discrepant unit with a serviceable unit. This amendment also will require eventual replacement of the MLG downlock actuators with improved units. This amendment is prompted by reports of improper operation of the MLG downlock actuator due to jamming. The actions specified by this AD are intended to prevent such jamming of the downlock actuator, which could result in failure of the MLG downlock system, and a potential gear-up 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 Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. 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 Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: 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 Fokker Model F28 Mark 0100 series airplanes was published in the Federal Register on December 11, 1995 (60 FR 63468). That action proposed to require repetitive inspections to verify the correct operation of the MLG downlock actuators; and replacement of any discrepant unit with a serviceable unit. For airplanes on which no discrepant unit is found, the AD also will require recording the accomplishment of each inspection on the unit nameplate. In addition, the AD will require eventual replacement of the MLG downlock actuators with improved units.

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

The commenter supports the proposed rule.

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

The FAA estimates that 119 airplanes of U.S. registry will be affected by this AD, that it will take approximately 21 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be supplied by the vendor at no cost to operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $149,940, or $1,260 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 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

96–07–02 Fokker: Amendment 39–9551. Docket 95–NM–99–AD.

Applicability: Model F28 Mark 0100 series airplanes equipped with Dowty Aerospace Hydraulics main landing gear (MLG) downlock actuators having part number (P/N) 201218001, 201218002, 201218003, or 201218004, all serial numbers; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 jamming of the MLG downlock actuator and a potential gear-up landing, accomplish the following:

(a) Within 2 months after the effective date of this AD, and thereafter at intervals not to exceed 1,250 landings: Perform an inspection to verify correct operation of the MLG downlock actuator having P/N 201218001, 201218002, 201218003, or 201218004, all serial numbers, in accordance with Fokker Service Bulletin SBF100–32–072, dated March 30, 1993, and Dowty Aerospace Hydraulics Service Bulletin F100–32–505, Revision 1, dated April 16, 1993.

(1) If the MLG downlock actuator operates as specified in the inspection procedure contained in the Accomplishment Instructions of Dowty Aerospace Hydraulics Service Bulletin F100–32–505, Revision 1, dated April 16, 1993, prior to further flight, record the accomplishment of the inspection on the unit nameplate in accordance with the Dowty Aerospace Hydraulics service bulletin. Following accomplishment of each subsequent inspection required by this AD, record the accomplishment of the inspection in accordance with the requirement of this paragraph.

(2) If any MLG downlock actuator does not operate as specified in the inspection procedure contained in the Accomplishment Instructions of Dowty Aerospace Hydraulics Service Bulletin F100–32–505, Revision 1, dated April 16, 1993, prior to further flight, replace the downlock actuator with a serviceable unit, in accordance with Chapter 32–32–05 of the Aircraft Maintenance Manual. Thereafter, perform repetitive inspections of the replacement unit in accordance with paragraph (a) of this AD until the replacement required by paragraph (b) of this AD is accomplished.

(b) Within 9 months after the effective date of this AD, replace any MLG downlock actuator having P/N 201218001, 201218002, 201218003, or 201218004, any serial number, with an improved unit having P/N 201218005, 201218006, 201218007, or 201218008, respectively; in accordance with Fokker Service Bulletin SBF100–32–074, dated July 21, 1993, and Dowty Aerospace Hydraulics Service Bulletin F100–32–506, dated June 9, 1993. Accomplishment of this replacement constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

(c) As of the effective date of this AD, no person shall install on any airplane a MLG downlock actuator having P/N 201218001, 201218002, 201218003, or 201218004, any serial number.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(f) The actions shall be done in accordance with Fokker Service Bulletin SBF100–32–072, dated March 30, 1993; Fokker Service Bulletin SBF100–32–074, dated July 21, 1993; Dowty Aerospace Hydraulics Service Bulletin F100–32–505, Revision 1, dated April 16, 1993; or Dowty Aerospace Hydraulics Service Bulletin F100–32–506, dated June 9, 1993, 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 Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. 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 25, 1996.

Issued in Renton, Washington, on March 19, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–7133 Filed 3–25–96; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500 and Part 1507

Large Multiple-Tube Fireworks Devices; Final Rule

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its fireworks regulations under the Federal Hazardous Substances Act. This final rule will require that large multiple-tube fireworks devices that have any tube with an inner diameter of 1.5 inches (3.8 cm) or greater pass a performance test for stability. Under the test, these devices may not tip over when inclined at an angle of 60 degrees from the horizontal. This requirement is intended to reduce the risk of injury posed when these fireworks devices tip over during firing. If they tip over, subsequent tubes may discharge in the direction of spectators or others in the vicinity.

DATES: The rule will take effect on March 26, 1997, and will apply to multiple-tube fireworks devices in which any tube has an inner diameter of 1.5 inches or greater and that first enter interstate commerce or are imported on or after that date.

Adversely affected persons have until April 25, 1996 to file objections to this rule, stating grounds therefor and requesting a public hearing on those objections. Objections and requests for hearings must be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to the Office of the Secretary, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814 telephone (301) 504–6800.

FOR FURTHER INFORMATION CONTACT: Samuel B. Hall, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207–0001; telephone (301) 504–0400, ext. 1371.

SUPPLEMENTARY INFORMATION:

A. Background

Multiple-tube mine and shell fireworks devices (also called ''display racks'' and referred to in this notice as ''multiple-tube devices'') are non-reloadable devices that fire multiple aerial shells, comets, or other effects into the air to produce visual and audible effects. These devices consist of several vertical tubes with a common fuse, either with or without a horizontal base. They are classified by the Department of Transportation (''DOT'') as 1.4G explosive devices (formerly Class C common fireworks devices) which are suitable for use by consumers.

The devices are designed to fire sequentially. This creates the danger that the device's reaction to one shot may cause it to tip over. Subsequent shots may then fire horizontally or at an angle and hit the operator or spectators. The Commission is aware of two deaths to spectators involving multiple-tube devices that occurred in this manner. Both of these incidents involved devices with tubes larger than 1.5 inches in diameter.

The Commission regulates fireworks devices under the Federal Hazardous Substances Act (''FHSA''). 15 U.S.C. 1261–1278. Under its current regulations, the Commission has declared certain fireworks devices to be ''banned hazardous substances.'' 16 CFR 1500.17(a) (3), (8) and (9). Other fireworks devices must meet specific requirements to avoid being classified as banned hazardous substances. 16 CFR Part 1507. Commission regulations also prescribe specific warnings required on various legal fireworks devices, 16 CFR 1500.14(b)(7), and designate the size and location of these warnings. 16 CFR 1500.121.

On July 1, 1994, the Commission issued an advance notice of proposed rulemaking (''ANPR'') discussing the

hazard presented by multiple-tube devices of all sizes, but noted that more severe incidents have occurred with large devices. 59 FR 33928. The ANPR used 1 inch (2.54 cm) as the cutoff between small and large devices. The ANPR explained that the Commission was considering the following regulatory alternatives: (1) ban all multiple-tube devices; (2) ban multiple-tube devices with an inside tube diameter of greater than 1 inch; (3) require additional labeling on all multiple-tube devices; (4) establish performance or design criteria to modify these devices; (5) pursue individual product recalls; and (6) take no mandatory action, but encourage development of a voluntary standard.

On July 5, 1995, the Commission issued a notice of proposed rulemaking (''NPR'') in which it proposed a performance standard for multiple-tube devices with any tube inner diameter of 1.5 inches or more. 60 FR 34922. The Commission found that 1.5 inches is a more appropriate measure to distinguish between large and small devices than is 1 inch, and decided not to propose any further regulatory requirements for smaller devices.[1] The proposed performance standard provided that all large multiple-tube devices have a minimum tip angle greater than 60 degrees. With this notice, the Commission issues the performance standard as a final rule.

B. Statutory Authority

This proceeding is conducted under the FHSA. 15 U.S.C. 1261–1278. Fireworks are ''hazardous substances'' within the meaning of section 2(f)(1)(A) of the FHSA because they are flammable or combustible substances, or generate pressure through decomposition, heat, or other means, and ''may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use * * *.'' 15 U.S.C. 1261(f)(1)(A).

Under section 2(q)(1)(B) of the FHSA, the Commission may classify as a ''banned hazardous substance'' any hazardous substance intended for household use which, notwithstanding the precautionary labeling that is or may be required by the FHSA, presents such a hazard that keeping the substance out of interstate commerce is the only adequate way to protect the public health and safety. Id. at 1261(q)(1)(B). A proceeding to classify a substance as a banned hazardous substance under section 2(q)(1) of the FHSA is governed by sections 3(f)–(i) of the FHSA, and by sections 701(e)–(g) of the Federal Food, Drug, and Cosmetic Act (''FDCA''), 21 U.S.C. 371(e)–(g). See 15 U.S.C. 1261(q)(2).

The July 1, 1994, ANPR was the required first step to declare the specified multiple-tube devices to be banned hazardous substances under section 2(q)(1). See 15 U.S.C. 1262(f). The proposed rule, published on July 5, 1995, continued the regulatory process in accordance with 15 U.S.C. 1262(h). To fulfill additional statutory requirements, this notice includes the text of the final rule and a final regulatory analysis. Id. at 1262(i)(1). As required by the FHSA, the Commission also makes findings here that: (1) compliance with any relevant voluntary standard is unlikely to adequately reduce the risk of injury, or substantial compliance by the industry with the voluntary standard is unlikely; (2) the expected benefits of the regulation bear a reasonable relationship to its expected costs; and (3) the regulation imposes the least burdensome requirement that would adequately reduce the risk of injury. Id. at 1262(i)(2).

C. Filing Objections Under Section 701(e) of the FDCA

The procedures established under section 701(e) of the FDCA also govern this rulemaking. 15 U.S.C. 1261(q)(2). These procedures provide that once the Commission issues a final rule, persons who would be adversely affected by the rule have 30 days in which to file objections with the Commission stating the grounds therefor, and to request a public hearing on those objections. 21 U.S.C. 371(e). If objections are filed, a hearing to receive evidence concerning the objections would be held. The presiding officer would then issue an order, based upon substantial evidence. Id. The Commission's procedural rules at 16 CFR Part 1502 would apply to such a hearing.

Any objections and requests for a hearing must be filed with the Commission's Office of the Secretary. They will be accepted for filing if they meet the following conditions: (1) they are submitted within the 30-day period specified; (2) each objection is separately numbered; (3) each objection specifies with particularity the provision(s) of the regulation to which the objection is directed; (4) each objection on which a hearing is requested specifically requests a hearing; and (5) each objection for which a hearing is requested includes a detailed description of the basis for the objection and the factual information or analysis in support thereof (failure to include this information constitutes a waiver of the right to a hearing on that objection). 16 CFR 1502.6.

The Commission will publish a notice in the Federal Register specifying any parts of the regulation that have been stayed by the filing of proper objections or, if no objections have been filed, stating that fact. Id. at § 1502.7. As soon as practicable, the Commission will review any objections and hearing requests that have been filed to determine whether the regulation should be modified or revoked, and whether a hearing is justified. Id. at § 1502.8.

D. The Product

As explained in the proposed rule, this rulemaking only applies to multiple-tube devices that have any tube equal to or greater than 1.5 inches in inner diameter (referred to below as ''large devices''). Large devices were first introduced by domestic manufacturers around 1986. Generally, they consist of three or more tubes grouped together, sometimes on a wooden base, and fused in a series to fire sequentially. Bases, where used, come in a variety of sizes. The devices fire aerial shells, comets, or other effects from the tubes, producing visual and audible effects. These devices are among the largest fireworks available to consumers. [13][2]

The tubes may be individually labeled or have a single label surrounding them. Commission regulations require that all multiple-tube devices display the following conspicuous label:

Warning (or Caution) Emits Showers of Sparks (or Shoots Flaming Balls, if More Descriptive)

Use only under [close] adult supervision.[3]
For outdoor use only.
Place on a hard smooth surface (or place upright on level ground, if more descriptive).
Do not hold in hand.
Light fuse and get away.

16 CFR 1500.14(b)(7)(ix).

The National Fireworks Association (''NFA'') reports that retail sales of large multiple-tube devices are between $24

[1] The Commission concluded that additional work would be needed to develop a standard that adequately addressed the tip-over hazard with small (less than 1.5 inch diameter) multiple-tube devices. For example, the Commission would need to test small devices to determine if the 60-degree tip angle is the proper criterion for this size device. Further, smaller devices are likely to produce less force on impact, and may be less likely to cause fatal injuries. Because not many small devices are marketed and the known incidents involve large devices, a performance standard for small multiple-tube devices may not be necessary. Accordingly, the Commission decided to apply the stability criterion only to large devices.

[2] Numbers in brackets refer to documents listed at the end of this notice.

[3] The word ''close'' is optional.

and $36 million annually, with an estimated 400,000 to 700,000 units sold per year. Prices range from $30 to $130 per unit, with most devices in the $50 to $60 range. The NFA also reports that domestic devices account for about 75 percent of the market by dollar volume and somewhat less by unit sales. Imported devices are manufactured primarily in China, and go through several wholesalers before reaching the retail vendor. [13] Some devices have tubes that are imported from China and then are inserted into larger tubes and assembled with bases in the United States. CPSC considers such devices to be imported.

E. Risk of Injury

The devices fire sequentially, and under some conditions the force from one shot can tip the device over, causing it to fall into a horizontal position. A subsequent shot can discharge as the device is falling or when it is horizontal. When this occurs, there is a risk that one of the projectiles may strike the operator of the device or spectators and cause serious injury, or even death.

The Commission is aware of two deaths involving large multiple-tube devices. In both incidents, the device tipped over while functioning. A projectile then fired horizontally from the device and struck the victim. In each case, the victim was a spectator.

The first fatality occurred in July of 1991. A 3-year-old boy was standing between his father's legs approximately 40 feet from an area where fireworks were being set off at a family reunion. The device had been placed on concrete blocks. The device tipped over after the third shot, and the fourth shell fired horizontally in the direction of the boy, striking him in the left ear. He died the next morning. [2, Tab A]

The second fatality occurred in July of 1992. The victim, a 65-year-old grandmother, was sitting at the end of a picnic table watching a family fireworks display approximately 40 feet away. Her son placed a large multiple-tube device on a piece of wafer board that extended about one foot over the end of a boat dock. He placed a 2x4 block of wood under the end of the board so that the device would shoot out over the lake. After lighting the device, he walked toward the shore and noticed that the device had tipped over after the third shot. The fourth shell discharged horizontally and struck his mother in the temple and eye. She died the next morning. [2, Tab A]

CPSC's compliance testing indicates that the tip-over risk evidenced by these two incidents continues to exist. In fiscal year 1994, all 24 samples of imported devices tested for the Commission's routine compliance program, and 1 of 8 samples of domestic devices, tipped over while functioning. In fiscal year 1995, 22 of 27 imported samples and 1 of 5 domestic samples tipped over. [19]

F. Commission Tests to Develop a Standard

1. Testing Prior to the ANPR

After the first fatality, several domestic manufacturers of large multiple-tube devices began developing a test for the potential of these devices to tip over while functioning. The test used a 2-inch (5 cm) thick block of medium-density (2 pounds per cubic foot or 0.032g/cm^3) polyurethane upholstery foam to simulate uneven surfaces. When placed on this surface, if a device tipped over while functioning, it was deemed too unstable.

The American Fireworks Standards Laboratory (''AFSL'') then began work to revise its standard for these devices to incorporate such a dynamic stability test. AFSL issued an interim revised voluntary standard in January 1993 and adopted it without changes on September 5, 1995. The Commission also collected samples of large multiple-tube devices and tested them for tip-over using the industry's dynamic stability test. [1 and 14]

2. CPSC's Dynamic Stability Testing

After issuing the ANPR, the Commission staff attempted to develop a dynamic stability test that could provide a reliable performance standard for multiple-tube devices. The staff's objective was to develop a test that could reliably distinguish between large multiple-tube devices that are dangerously unstable and those that do not present an unreasonable tip-over risk. The staff attempted to identify a test surface that would simulate grass (the surface believed to be commonly used for fireworks displays), and that would produce consistent results in repeated tests.

To accomplish this goal, the Commission had to identify a surface on which the devices would consistently tip over or remain upright in a manner corresponding to how the devices perform on grass. If the tip-over rate was substantially greater on the test surface than on grass, the standard might be too stringent, causing unnecessary changes to reasonably safe products. If the tip-over rate was substantially lower on the test surface than on grass, the standard might not adequately protect consumers.

As explained in detail in the Federal Register notice that published the proposed rule, the staff's testing did not yield sufficiently reliable results to propose a dynamic standard. 60 FR 34922, 34924. The staff tested devices on several types of foam. First it tested with 2-inch thick foams of three different densities. This thickness was chosen, in part, because the AFSL standard specifies 2-inch thick medium-density foam. However, the tip-over rates with all three densities of two-inch thick foam in this initial test were significantly greater than with grass (39 to 50 tip-overs out of 50 devices on foam compared with 4 out of 50 on grass). The staff then tested three high-density foams of smaller thicknesses (0.75, 1.0, and 1.5 inches), hoping to better match the tip-over rates on grass. [6, 8] However, none of the these three foams agreed consistently with grass for all three devices tested. The results of this phase of testing are summarized in Table 1.

TABLE 1.—PHASE I—INCIDENCE AND PERCENTAGE OF TIP-OVER WITH LARGE MULTIPLE-TUBE DEVICES ON GRASS OR HIGH DENSITY POLYURETHANE UPHOLSTERY FOAM

Device	Grass	Polyurethane foam		
		0.75 inch	1.0 inch	1.5 inch
1	4/50	4/50	14/50*	40/50*
	8%	8%	28%	80%
2[a]	32/50	9/50*	25/50	43/50*
	64%	18%	50%	86%
3[a]	27/50	2/50*	3/50*	7/50*

TABLE 1.—PHASE I—INCIDENCE AND PERCENTAGE OF TIP-OVER WITH LARGE MULTIPLE-TUBE DEVICES ON GRASS OR HIGH DENSITY POLYURETHANE UPHOLSTERY FOAM—Continued

Device	Grass	Polyurethane foam		
		0.75 inch	1.0 inch	1.5 inch
	54%	4%	6%	14%

* Significantly different from grass, P<0.05.
[a] Device modified to increase tip-over rate.

Of the three foams, 1-inch foam appeared to offer the best overall relationship to grass, even though it produced inconsistent results. [6, 8] Therefore, the staff continued testing with this foam.

In phase II of the Commission's testing, six additional devices were tested on grass and on 1.0-inch thick high density foam. The results were then combined with the results from phase I. Once again, however, there was not consistent agreement between the tip-over rates on foam and on grass (see Table 2).

TABLE 2.—PHASE II—INCIDENCE AND PERCENTAGE OF TIP-OVER WITH LARGE MULTIPLE-TUBE DEVICES ON GRASS OR 1.0-INCH HIGH DENSITY POLYURETHANE UPHOLSTERY FOAM

Device	Grass	Foam
1 [a]	4/50 8%	14/50 * 28%
2 [b]	32/50 64%	25/50 50%
3 [b]	27/50 54%	3/50 * 6%
4 [b]	30/50 60%	36/50 72%
5	0/90 0%	0/50 0%
6 [a]	10/50 20%	25/50 * 50%
7	0/50 0%	0/50 0%
8	0/90 0%	0/50 0%
9	0/50 0%	0/50 0%

* Significantly different from grass, P<0.05.
[a] Device has no base.
[b] Device modified to increase tip-over rate.

The staff concluded that the dynamic stability test it attempted to develop could not reasonably form the basis for a standard addressing the tip-over hazard with large multiple-tube devices. Particularly problematic was the dynamic test's inconsistency. There were two cases (devices 1 and 6) in which foam significantly overpredicted the tip-over rate with grass. In another case (device 3) foam significantly underpredicted the tip-over rate with grass. [6, 8] These tests showed a highly significant ''interaction'' between the device and test surface, so that one could not accurately predict, based on a device's performance on foam, how the device would behave on grass. An accurate test is needed to avoid unwarranted market disruption and, more importantly, because a tip-over can lead to a fatality.

3. The Tip-Angle Test

Since the Commission's testing on foam did not yield a reliable dynamic test, the staff looked to the physical properties of large multiple-tube devices to develop a static test. The staff measured the dimensions, mass, and static tip-over resistance (''tip angle'') of all the devices tested. The angle at which a device will first tip over depends on its base-height ratio, mass, and center of gravity. A device's dynamic stability—its ability to remain upright when fired—depends on its tip angle and other factors, such as its lift force, the firing order, and the time between firings. The staff found that tip angle could predict whether a device would tip over while functioning and also be sufficiently sensitive for routine compliance testing. [9]

The staff measured the tip angle of devices by placing one edge of the device against a mechanical stop approximately 1/16-inch high (to prevent sliding) at the edge of a horizontal hinged platform. The platform was slowly raised from the horizontal until the device tipped over. The tip angle was considered to be the angle at which the device first tips over. The staff repeated the test for each edge of the device to determine its minimum tip angle. In this manner, the staff measured the tip angle for the nine large devices used in the dynamic tests. The staff then compared these measurements and the results of the dynamic tests to determine whether there was a relationship between the minimum tip angle of a device and its dynamic stability on grass (see Table 3). [9]

TABLE 3.—STATIC TIP-OVER RESISTANCE AND DYNAMIC TIP-OVER RATE OF LARGE MULTIPLE-TUBE DEVICES

Minimum tip angle (degrees)	Tip-over rate on grass		Device
	Percent	Incidence	
35, 42 [b]	54	27/50	3 [a]
37	64	32/50	2 [a]
37	20	10/50	6
37	8	4/50	1
40	60	30/50	4 [a]
61	0	0/90	5
64	0	0/50	7
65	2.5	1/40	4
68	0	0/40	2
69	0	0/50	9
70	0	0/40	3
78, 80 [b]	0	0/90	8

[a] Device modified to increase tip-over rate.
[b] Different samples of same device.

The staff also tested several large devices other than those it had examined when considering a dynamic test. One device was a modified form of device 1, that originally had no base. The staff glued a 12-inch (30.5-cm) square particleboard base to the device. With this modification, the tip angle increased from 37 degrees to 68 degrees. The tip-over incidence on grass also decreased, from 4/50 to 0/50. This additional test demonstrates that a device's stability can be improved by adding a base. [9]

The second additional device that the staff tested, an imported one, had a square plastic base. The tip angle of this device ranged from 54 to 55 degrees (based on measurements of four individual samples), and it did not tip over in 50 dynamic tests on grass. [16] [4]

None of the seven devices originally tested had tip angles between 43 and 61 degrees. Therefore, the staff modified the base of a device that had a large particleboard base in order to obtain a tip angle near 50 degrees. The staff

[4] The staff had previously tested this type of device (tip angle: 52–55 degrees and tip-over rate: 2/40), but the bases of some of the devices in the earlier test were cracked. Therefore, the Commission does not consider the earlier tests to be reliable and has not considered them in determining an appropriate tip angle. [10 and 11]

trimmed 2 1/16 inches off each of the two long edges of the base. The minimum tip angle of the device then ranged from 50 to 51 degrees (based on measurements of eight individual samples). This modified device tipped over in 33 out of 51 tests on grass. [16] Table 4 shows the tip angles and tip-over rates of the three additional devices that the staff tested.

TABLE 4.—STATIC TIP-OVER RESISTANCE AND DYNAMIC TIP-OVER RATE OF ADDITIONAL LARGE MULTIPLE-TUBE DEVICES [a]

Minimum tip angle (degrees)	Tip-over rate on grass		Description of device
	Percent	Incidence	
50–51 [b]	65	33/51	Four-tube device with base. Base trimmed to obtain 50 degree tip angle.
54–55 [b]	0	0/50	Seven-tube device with plastic base.
68	0	0/50	Seven-tube device. Same as device 1, but with added 12 inch base.

[a] Does not include devices that the staff considered to present inconclusive results.
[b] Range of values for replicate samples.

The Commission proposed and now issues in final a standard requiring that large multiple-tube devices must have a minimum tip angle above 60 degrees. The Commission's data indicate that substantially all of the devices measuring a tip angle above 60 degrees did not tip over while functioning on grass. Among such devices, there was only one tip-over in 450 tests. On the other hand, devices with tip angles below 60 degrees had tip-over rates on grass as high as 65 percent. Among all devices tested with tip angles below 60 degrees, there were 136 tipovers in 351 tests.

The Commission believes that requiring devices to have minimum tip angles above 60 degrees offers an appropriate margin of safety. The fact that the staff observed no tip-overs with one device that had a tip angle of 54–55 degrees might appear to suggest that a tip angle of 54 degrees would be sufficient to protect against the tip-over hazard. However, a device that had a tip angle of 50–51 degrees had a very high incidence of tip-overs (33/51). This device had a small base, and would have been even less stable if, like a number of other devices on the market, it had no base extending outward from the tube configuration. Thus, it is likely that some devices with 55-degree tip angles would tip over when tested on grass. Furthermore, the tests were performed on level ground, and in actual use there probably will be significant variations from level in a number of cases. The Commission concludes that in order to adequately protect the public, it is appropriate to require that the minimum tip angle be above 60 degrees.

AFSL submitted comments on the NPR that included results from its testing of 43 units (13 different devices). AFSL reported that 35 percent of the units it tested met a 60-degree tip-angle test and that none of the devices it tested tipped in actual firing. As explained below in Section G of this notice, this limited testing does not show that a requirement for a tip angle above 60 degrees is too stringent a measure of whether a multiple-tube device is unlikely to tip over in use.

G. Comments Responding to the Proposed Rule

The Commission received eight comments in response to the proposed rule. Some commenters stated that they support the proposed rule. Significant issues raised by other comments, and the Commission's responses, are summarized below.

1. Scope of the Rule

AFSL stated that it agreed with the Commission's decision to limit the scope of the proposed rule to large multiple-tube devices and that the Commission was correct in concluding that devices with inside diameters greater than 1 inch, but less than 1.5 inches, are not common.

2. Need for a Rule

Some commenters stated that the need for a rule had not been demonstrated because the number of reported injuries is low or because the injuries are caused by consumer misuse. As explained below, the Commission disagrees with these contentions.

a. Injury Data

Comments: One commenter claimed that the number of multiple-tube devices has increased, but that the number of injuries associated with them has not. The commenter concludes that the small number of injuries and deaths associated with multiple-tube devices or Class C fireworks does not justify further regulation. This commenter also claimed that multiple-tube fireworks devices are no different from other fireworks with respect to the potential for injury.

One group of commenters stated that in their evaluation of injuries recorded in the state of Indiana, multiple-tube devices and other consumer fireworks either have not tipped over or have caused few or no injuries.

Response: Mine and shell devices (both single and multiple shot) are more powerful than most consumer fireworks. Although the number of deaths and injuries associated with mine and shell devices is relatively low, the severity of injuries is greater than with other devices. Any tip-over of large multiple-tube devices has the potential to cause death or serious injury. Two individuals are known to have been struck by large multiple-tube devices. Both suffered fatal injuries.

The yearly unit sales figures for fireworks are unknown. Therefore, the Commission cannot accurately assess any possible trends in exposure to large multiple-tube devices. However, the cases show that the potential for tip-over and serious injury or death is high under certain conditions of foreseeable use. Since, as explained below, there is no voluntary standard that can adequately reduce this risk, the mandatory standard proposed by the Commission is necessary.

Comment: The commenters on the Indiana data also requested that the Commission survey dealers to inquire about reported cases or instances of a problem with a multiple-tube mine and shell device.

Response: As noted above, a mandatory standard is appropriate despite the low number of reported deaths and injuries. In view of this, there is no need to perform the requested survey.

Comment: AFSL contends that the lack of any known serious injury attributed to large multiple-tube devices since the adoption of the AFSL standard in 1993 supports their view that the voluntary standard is adequate.

Response: These devices had been on the market for 6 years by the time the two known deaths occurred. Thus, the absence of any known deaths since 1993 is not statistically significant. The adequacy of AFSL's standard, and the extent to which it is adopted by industry, are discussed below under the responses to comments favoring a dynamic test and to comments favoring the alternative of a voluntary standard.

b. Possible Role of Misuse and Alcohol in Tip-Over Incidents

Comment: One commenter alleged that any increase in mortality related to these items is the direct result of misuse and the failure of consumers to follow the appropriate instructions. The same commenter stated that the fireworks industry cannot be held accountable for all injuries, particularly when the item is being blatantly misused. The commenter also claimed that many fireworks-related injuries involve some level of intoxication by the operator and that the correlation between alcohol use and injury should be considered in the hazard analysis for any product.

Response: The incident reports do not indicate that the fatalities involving large multiple-tube devices were a result of misuse. Rather, they appear to have occurred during reasonably foreseeable use of the product. The two fatalities occurred during family gatherings a day or two after the July 4th holiday.

The labels on multiple-tube devices generally state that the device should be placed on a solid level surface prior to firing. In one fatality, concrete blocks were stacked in the yard as a staging area. In the other fatality, the fireworks device had been placed on a board so that it would fire over a lake. The use of the devices on either of these surfaces appears to indicate concern with the appropriate placement of the fireworks device prior to firing.

Thus, the known cases involving fatalities support the conclusion that the users were attempting to follow the instructions for proper placement of the devices. In addition, there is no indication that alcohol was a factor in either of the deaths. Accordingly, the Commission disagrees with the commenter's contention that consumer misuse or intoxication was the cause of these accidents.

Comment: One commenter claimed that, based on a 1992 CPSC study of hospital emergency-room-treated injuries, ''a major problem with fireworks injuries were the result of consumer misuse.''

Response: The study cited does not support this proposition for the devices at issue here. In discussing the category of Shells and Mines (the major two types of devices included in the this rulemaking), the report states that ''little can be said to characterize this category of fireworks due to the small sample size (five investigations). However, it appeared that the flight path of the projectile, particularly when tip-over was involved, may be a major concern.'' [23]

There may well have been misuse of the multiple shell devices associated with some of the injuries in the study. However, nothing in the report indicated that the injuries could be attributed to any such misuse, as opposed to erratic flight path, tip-over, or other problems with the devices.

c. Section 15 of the CPSA

Comment: One commenter stated that the proposed rule is unnecessary because existing regulations and section 15 of the Consumer Product Safety Act (''CPSA'') are adequate. 15 U.S.C. 2064. Section 15 authorizes the Commission to take corrective actions regarding product defects that create a substantial risk of injury to the public. See 16 CFR 1115.4, 1115.12 (e) and (g).

Response: Existing fireworks regulations require only a base-to-height ratio of at least 1:3. 16 CFR 1507.4. All the devices tested by CPSC that tipped over during actual use complied with this standard. Therefore, this requirement does not adequately address the tip-over hazard.

In addition, the ongoing problem of numerous section 15 recalls of multiple-tube devices under section 15 of the CPSA due to tip-over indicates that existing regulations are not effective. Under these circumstances, a performance standard that effectively addresses the problem for all devices is more appropriate than case-by-case investigation and recall.

3. Selection of the Tip-Over Angle

Comment: One commenter stated that there is no logical or statistically valid reason for choosing any particular angle as the minimum angle required by the static test.

Response: In developing the proposed rule, the staff considered specifying minimum tip angles as low as 45 degrees. However, as noted above, the Commission concluded that, to provide a margin of safety and to address the likelihood that the devices will not be used on level ground, the static test should require that a device not tip at an angle of 60 degrees.

It is possible that a fireworks device might be constructed that would not tip over in a static test at 60 degrees but would tip over under foreseeable conditions on grass. In fact, 1 of the 450 devices tested by the Commission with a tip angle over 60 degrees did tip over when tested on grass. Increasing the stringency of the static test to address such hypothetical ''outliers'' would make the requirement unduly restrictive for the vast majority of designs that are likely to be marketed. If such easy-to-tip designs are marketed in the future, the Commission will consider action under section 15 of CPSA. 15 U.S.C. 2064.

Comment: One commenter suggested a more lenient tilt test for items that do not present as much of a tip-over hazard as other available designs. The commenter stated that a more lenient tilt test was especially appropriate for devices with tubes clustered in the center of the base. The commenter asserted that multiple-tube items with tubes clustered close to the center of the base will more likely fail the static test, but be more stable when tested on foam or grass than multiple-tube items with tubes near the edge of the base. The commenter provided sketches to illustrate this point, and also suggested a formula to determine the tilt angle based on the geometry of the devices relative to the geometry of the base:

$T=45+15\ (d/b)$, where:

T is the tip angle in degrees; d is the length of the diagonal of a square (or diameter of a circle) enclosing the tubes; and b is the length of the diagonal of a square base or diameter of a circular base.

The commenter stated that preliminary testing supports the formula, but provided no data and admits that further tests are needed.

Response: The staff of the Commission's Engineering Laboratory agrees that there are configurations that could provide greater or lesser stability for a fired multiple-tube device. The commenter lists base size, base thickness, lift charge, and size of the aerial load as relevant factors affecting stability. However, firing order and rate, as well as other variables, also affect the dynamic stability of multiple-tube devices.

The commenter supplied no data on which to evaluate the suggested formula. The Commission has very limited data on the tip-over characteristics of devices with tip angles in the range of 45 to 60 degrees. As explained above, the Commission selected the 60-degree tip angle criterion based on a device with a tip angle of 50 to 51 degrees that tipped over a large proportion of the time (33/51) when tested dynamically on grass. In addition, various combinations of the factors that affect tip-over could cause a device with

a similar configuration to tip over more readily than the tested device. The suggested formula does not account for these other factors—such as load, firing rate, etc. The Commission's criterion does account for these factors by correlating tip angle to dynamic tip-over on grass.

The commenter's formula is intended to be applied to devices with a square or circular base. The device with the 50–51 degree tip angle that had a high tip-over rate had a rectangular base. It is not clear how, if at all, the commenter would apply the formula in this case. However, it can be expected that the formula will produce tip-angle criteria ranging between 50 and 60 degrees, depending on the configuration. Available data do not show that such criteria would provide an adequate margin of safety. Accordingly, the Commission is not adopting this commenter's suggestion.

Comment: As explained above, the Commission selected the 60-degree criterion based on the performance on grass of a large number of tests of various large devices. Some comments questioned the adequacy of this testing. One commenter asked why the Commission did not test the devices that were recalled as a result of failing the 2-inch foam test and the device known to have been involved in the death of a 3-year-old boy. The same commenter suggested that CPSC conduct additional tests comparing the static test to the dynamic test with foam. Another commenter questioned why the Commission did not test a larger sampling of the various multiple-tube devices, including the W–800 inserts with a wooden base and a tube around the insert.

Response: In developing the proposed standard, the Commission selected devices that represented a cross section of the devices available at the time and that provided a range of tip-over rates. The Commission considered design characteristics such as base size, firing order, internal fuse-burn time, lift charge, shell mass, device shape, center of gravity, and quality of materials and construction. This cross-section of devices is sufficient to ensure that the test selected by the Commission is reasonable.

Devices that had been previously recalled—as well as the device involved in the death of the 3-year-old boy—were not available at the time that the CPSC conducted its tests. It is expected that had they been available for testing, they would have been among those devices found to be unstable. However, the Commission believes that it is more reasonable to test currently available devices, rather than devices that are no longer manufactured or available.

Comment: Some commenters stated that there are devices that are stable in actual use even though they do not comply with the proposed rule. AFSL submitted test data to support this view. These commenters asserted that the proposed rule unfairly penalizes such devices.

Response: As explained above, AFSL presented limited test data on 12 large multiple-tube devices (one device included in AFSL's testing was actually a small device). Seven of these did not meet the 60-degree tip angle, but did not tip over in AFSL's dynamic tests.

AFSL's testing was very limited—only one sample of each device on three surfaces (concrete, 2-inch foam, and grass), and one device was not even tested on grass. A single test is not sufficient to establish the dynamic stability of a device. For example, a device that tips over 1 in 10 times may present a serious risk of injury, but there is only a 1-in-10 chance of observing a tip-over in a single test. In CPSC's tests, the staff tested from 40 to 90 samples of each device. The Commission cannot conclude based on AFSL's limited data that the seven devices it tested are stable when operated on grass.

4. Static v. Dynamic Test

Introduction. As noted above, the Commission's requirement involves inclining the device at an angle of 60 degrees while it is prevented from sliding by a stop on the inclined supporting surface. If the device does not tip over further at that angle, it complies with the requirement. This is a static test; it is affected only by the location of the center of gravity of the device with respect to the edge of the device that is against the stop.

Comments: A number of commenters would prefer a dynamic test, which would involve actually firing the device while it rests on a specified supporting surface to see if the device tips over. The American Pyrotechnic Association (''APA'') and AFSL stated that, although they support a requirement for static stability, a static requirement is not sufficient by itself to address the tip-over hazard. These two organizations and other commenters stated that, in addition to a static test, the proposed rule should require dynamic testing, either for all large devices or for those with tip angles between 45 and 60 degrees.

Response: Under the FHSA, manufacturers must consider whether their products pose a hazard during ''reasonably foreseeable handling and use.'' The Commission considers operation of multiple-tube devices on grass to be ''reasonably foreseeable.'' Further, the resilient and variable nature of grass makes it more likely that a device will tip over when fired from a grass surface than from other common supporting surfaces, such as dirt or pavement. Thus, an adequate test should address the hazard of tip-over of these devices when fired while sitting on grass as well as on more forgiving surfaces.

A substantial problem with dynamic testing of these devices is that grass is not a reproducible test surface. Even patches of grass that appear to be identical can react differently to the forces produced when a device is fired.

Foams of various characteristics have been suggested as suitable test surfaces for determining whether a device will tip over when fired. AFSL uses 2-inch thick medium-density foam in its tip-over testing.

The staff considered whether foam is an adequate surrogate for grass—that is, whether there is a consistent relationship between the tip-over behaviors on grass and foam for a variety of devices. Based on the CPSC's tests, however, there was no consistent relationship between the tip-over rates measured on grass and foam. In fact, the tests suggested that there may be cases where devices that do not tip over when tested on foam may tip over frequently on grass.

The Commission concludes that, because of the absence of any suitable test surface, the use of dynamic testing for devices, regardless of their tip angle, is not presently feasible. However, the results of any voluntary dynamic tests by industry may provide valuable information when considered in conjunction with a device's tip angle. And, as explained above, the Commission will examine whether devices that tip over when fired despite passing the 60-degree tip-angle test present a substantial product hazard under section 15 of the CPSA.

5. Dynamic Variations in Tip-Over Potential

Comment: One commenter noted that the potential for tip-over from multiple-tube mine and shell devices is not equal among all of the various shapes, sizes, and configurations of devices.

Response: The Commission agrees that the potential for dynamic tip-over from multiple-tube fireworks devices can differ among the various shapes, sizes, and configurations of devices with the same static tip angle. For example, devices that have larger or heavier bases or smaller lift (propellant) charges are less likely to tip over. Nevertheless, for

the reasons explained above, the 60-degree tip-angle test is the best means available to determine whether a multiple-tube device is unreasonably likely to tip over when fired.

Comments on specific factors that may affect tip-over potential are discussed below.

Comment: One commenter stated that the rate of firing of the projectiles from the tubes can affect dynamic stability and that this should be examined.

Response: The Commission agrees that the rate of firing—the time between the firing of individual tubes—may affect the dynamic stability of multiple devices. A multiple-tube device can become less stable as a result of rapid sequential tube firings. In compliance testing, the Commission considers whether the firing rate may contribute to tip-over. The staff has discussed with AFSL the possibility of incorporating into their standard a minimum time between the firing of successive tubes. However, the rate of firing is only one of many variables that affect the dynamic stability of multiple-tube devices. The 60-degree tip-angle test requirement, which takes into account several factors, is the best known way to address the tip-over hazard.

Comment: Several commenters stated that, in addition to the static test, the proposed rule should limit the lift charge—i.e., the propellant powder weight—to 12 grams per tube. AFSL presented test data showing that increasing the lift charge above the 12-gram limit may decrease the dynamic stability of multiple-tube devices. A specially made device (not commercially available), with 20 grams of lift charge per tube, tipped over in one test on 2-inch foam. A similar device with 12 grams of lift charge did not tip over in one test on foam. Another specially-made device did not tip over in one test on foam, even though the lift charge was increased to 20 grams.

Several commenters asked why the CPSC did not study the effects on stability of the amount of lift charge in devices.

Response: U.S. Department of Transportation (''DOT'') regulations permit a maximum of 20 grams of lift charge per tube. The AFSL voluntary standard limits the lift charge to 12 grams per tube. The proposed rule did not separately address lift charge. The DOT mandatory 20-gram upper limit and AFSL voluntary 12-gram upper limit are unaffected by this rulemaking.

The staff measured the lift charge in all the devices that were tested. The lift charges in the two devices that tipped over on grass (before they were modified) were 3.6 and 4.7 grams per tube. The lift charges in devices that did not tip over ranged from 4.7 to 11.6 grams per tube. [6] These results do not support limiting the lift charge. Devices with a lift charge greater than 12 grams per tube were not available to the staff.

The lift charge is only one of the variables that affect dynamic stability. Other variables include firing order, firing rate, weight, the configuration of the tubes, and base dimensions. Further, the lift force (or propellant force)—rather than the lift charge—relates more directly to dynamic stability. The lift force depends on factors in addition to the lift charge, such as the type of powder and the design of the product. Again, the staff's data show that the dynamic performance of the device is better predicted by a static test.

It may be possible to construct a device that will tip over in actual use, even though it passes the 60-degree static stability test. AFSL's tests suggest this may be the case. But, the small number of tests conducted by AFSL (two devices, one test each) and the mixed results it reported (one device with 20 grams of lift powder tipped over on foam while another did not) are not adequate to support a mandatory 12-gram limit on the lift charge.

Manufacturers, importers, and distributors must see that their products do not pose a substantial product hazard. Increasing the lift charge might increase the tendency of multiple-tube devices to tip over during operation. Devices developed in the future that exceed 12 grams of lift charge will be tested by the Commission. Any device that tips over while functioning, even though it complies with the static test, may present a substantial product hazard. As explained above, the Commission may take enforcement action in such a case under section 15 of the CPSA. Thus, although the Commission lacks data to warrant a mandatory limit at this time, the Commission encourages manufacturers and importers to continue compliance with the voluntary limit of 12 grams of lift charge per tube since the amount of lift charge may affect tip-over.

6. Other Advantages of a Static Test

Comment: The AFSL and the APA stated that they favor a static test, as in the proposed standard, because it is safer to perform than dynamic testing. One commenter stated that it appears that the Commission proposed a standard based on a static test, in part, because it is easier to perform than dynamic testing.

Response: The Commission proposed a mandatory standard based on the static test because it adequately addresses the hazard and a suitable dynamic test is not available. That the static test is easier and safer to perform are additional advantages.

7. Other Alternatives to the Proposed Rule

a. Additional Labeling

Comment: One commenter suggested requiring the warning label on multiple-tube devices to include a phrase such as, ''PLACE UPRIGHT ON HARD, SMOOTH LEVEL SURFACE BEFORE IGNITING. DO NOT FIRE ON GRASS OR OTHER UNSTABLE SURFACE.''

Response: The Commission's current labeling requirement for mine and shell devices includes the following statement: ''Place on hard smooth surface (or place upright on level ground, if more descriptive).'' 16 CFR 1500.14(a)(7)(ix). Except for the admonition not to fire on grass, the commenter's suggested label is equivalent to the Commission's current requirement. As to the statement ''do not fire on grass,'' it is likely that users will place these devices on whatever surface is at the desired location, including grass. Thus, the Commission cannot conclude that there would be significant safety benefits from a label advising against use on grass. Furthermore, the longer label statement suggested by this commenter could reduce the extent to which the basic message is noticed and read by users. Although the Commission lacks the evidence to mandate the ''do not fire on grass'' statement, and questions its effectiveness, the Commission would not object if manufacturers voluntarily supply such a statement after the required label.

In addressing a product hazard, the most effective approach is to design the hazard out of the product. A warning does not remove the hazard; it only informs the consumer of the hazard. Some users may read and follow the information on a warning label. However, fireworks are frequently used at night when it is too dark for the user to read a warning label. Fireworks also are often used at a party or celebration in which users are unlikely to take the time to read and follow warning labels. And, spectators, like the two victims killed by multiple-tube devices that tipped over, probably will not have an opportunity to read the label.

Even if consumers read and follow a warning label, the device may tip over. In the two death incidents, the fireworks devices were placed on hard, smooth surfaces and they still tipped over. The Commission believes that the proposed

tip-over performance requirement for multiple-tube devices will result in less hazardous multiple-tube devices.

b. Defer to AFSL's Voluntary Standard

i. Adequacy of the Voluntary Standard

Comments: Several commenters supported AFSL's voluntary standard. One group of commenters stated that they would prefer that the Commission allow the industry to adopt a voluntary standard, rather than issue a mandatory standard. Specifically, one commenter referred to AFSL's standard—i.e., the 2-inch foam test—and asserted that foam is a standard, reproducible test surface, even though it is not an adequate surrogate for grass. Another commenter questioned CPSC's conclusion that the AFSL standard did not adequately address the tip-over hazard. AFSL commented that the foam test is intended to simulate a worst-case scenario and that, even though the foam test may not be suitable for a mandatory standard, it adequately addresses the tip-over hazard.

Response: AFSL's foam test has many substantial shortcomings. AFSL does not specify the properties of the foam—such as compressibility, resiliency, and density—that are essential for a reproducible test.[5] Neither does AFSL specify the environmental conditions, such as temperature and wind speed, that may affect the test results, or the number of devices to be tested. All of these parameters must be specified before the foam test could be considered a standard, reproducible test. And, perhaps most significantly, there is simply no evidence of a consistent relationship between tip-over rates on grass and foam. Thus, a test on foam would not be appropriate even if all the test parameters were specified.

AFSL has never released test results showing that 2-inch foam is a worst-case surface compared to grass. CPSC has only limited data from tests of devices on both 2-inch foam and grass. The Commission's initial tests showed that the 3 different densities of 2-inch foam tested had considerably higher tip-over rates than did grass.

The more extensive tests that the Commission performed on other thickness of foam show that, depending on the device tested, the tip-over rate on foam may be greater than, equal to, or less than that on grass. Furthermore, the Commission's compliance testing in 1995 showed a domestic device that tipped over on grass (1 of 5 tested), but not on 2-inch medium-density foam. Therefore, the Commission concludes that the currently available information does not support the conclusion that 2-inch foam (or foam in other thicknesses) is a worst-case test surface that is consistently more stringent than grass.

As regards tip angle, the AFSL standard requires a tip angle of only 18 degrees, whereas CPSC tests show that a tip angle of 60 degrees is needed to reasonably prevent tip-over. The Commission concludes that the AFSL standard's tip-angle provision does not adequately address the tip-over hazard with large multiple-tube fireworks devices.

ii. Likelihood of Compliance With the Voluntary Standard

Comment: AFSL commented that a domestic testing program to allow manufacturers to obtain certification for their products has not been established and that the decision to follow the voluntary standard rests solely with individual manufacturers. However, AFSL states that its recent testing of large multiple-tube mine and shell devices indicated that products received from known manufacturers ''appeared to comply with the stability provisions of the AFSL standard.'' According to AFSL, under its China-based testing and certification program, all large multiple-tube mine and shell devices (with tubes larger than 1'' inside diameter) from participating firms are tested for compliance with the voluntary standard. Any devices that fail to comply are ''withheld from shipment to the participating U.S. importer.''

Response: Even if using 2-inch thick medium-density foam were effective, the Commission concludes that AFSL's voluntary standard would not adequately reduce the risk of tip-over because it is unlikely that there will be substantial industry compliance with that standard.

The AFSL standard was adopted in January 1993. However, the results of CPSC's compliance testing indicate that these devices still tip over. In fiscal year 1994, all 24 imported devices tested by CPSC, and 1 of 8 domestic devices, tipped over on either grass or 2-inch thick medium density foam. Of the 32 devices tested on the foam, 25 tipped over, and 4 of these also tipped over when tested on grass. In fiscal year 1995, 22 of 27 imported devices and 1 of 5 domestic devices tipped over. Of the 32 devices tested that year on 2-inch medium-density foam, 21 tipped over, and 10 tipped over when tested on grass. If there were substantial compliance with the AFSL standard, these high rates of tip-over on foam would not likely occur.

There is no information to support a conclusion that the rates of compliance with the AFSL standard will improve. The Commission concludes, therefore, that there will not likely be substantial compliance with the AFSL standard.

c. A Ban of Large Devices

The Commission also considered whether large multiple-tube devices should be banned entirely.

Comment: The National Fire Protection Association (''NFPA'') generally has taken the position that fireworks should be used only by licensed professionals. However, in this case, NFPA agreed with the Commission's conclusion that limiting multiple-tube devices to professionals would not eliminate the tip-over hazard. Some commenters stated that the performance standard is preferable to a total ban of large devices.

Response: The Commission agrees that a performance standard is the most appropriate option in this case.

8. Effective Date

Comment: One commenter stated that manufacturers need 1 year to redesign devices, use up current inventory, order new packaging, and obtain Department of Transportation (''DOT'') approval for that packaging.

Response: The Commission proposed an effective date of 6 months after publication of a final rule. The rule will apply only to devices first introduced into commerce or imported on or after that date. The vast majority of fireworks are ordered by dealers from July to December and delivered from December to June. The Commission expects that most of the devices currently not complying with the standard can be modified to meet it—*e.g.*, by adding a base. Consequently, any devices still in manufacturers' or importers' inventories on the effective date would not be rendered useless.

According to the DOT official responsible for enforcing regulations on new packaging, it may take 6 to 12 months for firms to obtain DOT approval of changes to the devices, order new packaging, and obtain DOT approval for that packaging. Larger firms are likely to be the ones that will need the full 12-month period, due to the larger number of models that could be affected.

Therefore, a number of firms will need an effective date that is longer than the proposed date of 6 months, and up to 12 months, following publication of the final rule in the Federal Register. Accordingly, the Commission is extending the effective date to 12 months following publication. The final

[5] Although AFSL specifies medium-density foam, the definition of ''medium'' may differ among foam suppliers.

rule will thus become effective March 26, 1997.

As noted previously, fireworks deliveries are concentrated in the period December through June. The effective date falls within that period. Therefore, it is likely that some but not all large multiple-tube devices sold at retail for the 1997 summer season will comply with the tip-angle requirement.

9. The Costs of the Regulation

a. Portion of Existing Large Devices To Be Changed by the Rule

Comment: AFSL presented test data with large multiple-tube mine and shell devices from what it claims are all five domestic manufacturers.[6] Based on these tests, AFSL claimed that only 35 percent of domestic devices complied with the proposed rule (60-degree tilt test), although all were stable in dynamic testing. The Commission's preliminary regulatory analysis assumed that almost all domestic devices would comply with the proposed rule.

Response: AFSL's results contrast with CPSC staff's tests, in which all domestic large multiple-tube devices met the proposed 60-degree tip-angle test. Several aspects of AFSL's testing lead the Commission to question AFSL's conclusions about the anticipated level of compliance with the 60-degree tip-angle test.

AFSL presented test results for 13 models of multiple-tube mine and shell devices. Device number 7 had an inside tube diameter of only 1.25 inches, and is not subject to the rule (which applies only to devices with tube inner diameters measuring 1.5 inches or more). The devices numbered 1, 2, 3, 12, and 13 are essentially imported devices or ''inserts'' to which wooden bases have been added. Based on AFSL's test data, 5 of 7 (71 percent) large domestic multiple-tube devices will satisfy the rule. The only two domestic devices tested by AFSL that would fail to comply with the rule are devices 8 and 11, since their tip angles were about 57 degrees. Both are new devices that were not available at the time that the CPSC tests were conducted. Combining AFSL's test data with CPSC's, 11 of 13 (85 percent) of large domestic multiple-tube devices would comply with the rule.[7] Therefore, the Commission disagrees with AFSL's claim that only 35 percent of domestic devices will comply with the proposed rule.

b. Cost of Modifying Noncomplying Devices

Comment: One commenter argued that retail prices of the modified devices would increase by 35 to 45 percent. The commenter did not present any basis for this estimate.

Response: The Commission's cost estimates are based on an average per-unit increase of 25–30 percent. These estimates were provided by the National Fireworks Association (NFA). The NFA is the fireworks trade association with the largest number of members, and the only one with a large contingent of retailers. The NFA estimate is the best one available to the Commission's staff.

10. Environmental Impact

Comment: One commenter stated that there would be a significant environmental impact due to increased rubbish from the larger bases.

Response: The rule is expected to result in modifications to devices representing sales of 100,000-to-175,000 items per year. [21] Consequently, the rule will result in a similar number of larger or new bases, and added packaging, being discarded. Most of these devices are expected to be thrown away after use with other residential trash (as is currently being done). The added costs of disposing of the bases and packaging will be negligible. The environmental impact of disposing of the relatively small amount of additional material required to provide a base, or increase its size, will be negligible. The additional cost to landfills of handling the extra rubbish also will be negligible.

H. The Standard

The Commission is issuing a standard requiring that multiple-tube devices that have any tube measuring 1.5 inches (3.8 cm) or more in inner diameter must have a minimum tip angle greater than 60 degrees. Large multiple-tube devices that do not meet the tip-angle requirement will be banned. The tip angle may be measured by placing the device on a smooth, flat surface inclined at 60 degrees from the horizontal. The device must not tip over at the 60-degree angle when tested at any edge of the device.

An apparatus or ''testing block'' for testing multiple-tube devices is illustrated in Figure 1 to § 1507.12. The height and width of the inclined plane (not including the portion of the plane below the mechanical stop) must be at least 1 inch (2.54 cm) greater than the largest dimension of the base of the device to be tested. The test apparatus must be placed on a smooth, hard surface that is horizontal, as determined by a spirit level or equivalent instrument. The mechanical stop must be 1/16 inch (1.6 mm) in height and perpendicular to the inclined plane. The stop must be positioned parallel to the bottom edge of the inclined plane in such a way that no portion of the device to be tested or its base touches the horizontal surface.

Any device that cannot be tested using the apparatus described above, or that presents a tip-over hazard while functioning even though it complies with the static test, may be examined to determine whether it presents a ''substantial product hazard'' under section 15 of the CPSA. 15 U.S.C. 2064. If the Commission determines that a substantial product hazard exists, appropriate enforcement action may be taken. See 15 U.S.C. 2064.

J. Regulatory Analysis [22]

1. Introduction

The Commission is amending the FHSA fireworks regulations to establish new stability requirements for multiple-tube fireworks devices that have any tube with an inside tube diameter of 1.5 inches or greater. These devices present a tip-over hazard when firing that has resulted in an average of about one death every 3 years over the period for which data are available.

The amendment will reduce the risk of injury and death from tip-overs. Devices that do not remain stable at an angle 60 degrees or below in prescribed tests will be banned hazardous substances under the amendment. It is expected that devices that do not currently pass this test will be able to comply by adding or enlarging a base.

In the Federal Register of July 1, 1994, the Commission issued an ANPR to develop a mandatory requirement to address the tip-over hazard. Although the ANPR addressed both large and small multiple-tube fireworks devices, the notice of proposed rulemaking (NPR) published July 5, 1995, covered only large multiple-tube devices.

To issue this amendment under the FHSA, the Commission is required to publish preliminary and final regulatory analyses containing a discussion of various factors. These factors include a description of the potential benefits and potential costs of the rule, including any benefits and costs that cannot be quantified in monetary terms, and an identification of those most likely to receive the benefits or bear the costs. The FHSA also requires a description of any reasonable alternatives to the rule,

[6] Although AFSL stated that all the devices tested were ''domestically manufactured,'' some contained imported inserts. CPSC classifies these devices as imports.

[7] It appears that one device was tested by both AFSL and CPSC. In combining the data, this device was counted only once.

together with a summary description of their costs and benefits, and a brief explanation of why such alternatives were not chosen.

2. Background

Large multiple-tube devices became popular in the mid-1980's. These devices typically consist of three or more tubes fused in a series to fire sequentially; these tubes are grouped together, sometimes on top of a wooden base. The devices are designed to fire aerial shells, comets, or mines producing visual and audible effects from non-reloadable tubes. They are among the largest fireworks available for direct consumer use.

The National Fireworks Association (NFA) reports that retail sales of these devices are between $24 million and $36 million annually, with an estimated 400,000 to 700,000 units sold per year. Prices range from $30 to $130 per unit, with most devices priced in the $50–$60 range. The NFA reports that domestic devices account for about 75 percent of the market by dollar value, and somewhat less by unit sales. There may be hundreds of firms engaged in manufacturing, importing, and distributing these fireworks. Imported devices are primarily manufactured in China, and may go through several wholesalers before reaching the retail vendor.

To comply with the standard, devices that do not have a base would have to add one, and some currently used bases would have to be enlarged. However, consumers are not likely to perceive any significant loss of enjoyment as a result. While some devices may be discontinued, loss of consumer choice would be minimized by the availability of devices that do comply with the standard. Smaller (less than 1.5 inch ID) multiple-tube devices are not covered by the rule and would continue to be available without any change.

3. Regulatory Analysis of the Amendments

a. Potential Benefits. One of the potential risks of injury associated with large multiple-tube fireworks devices results from the tip-over hazard. The Commission's Directorate for Epidemiology and Health Sciences reports two deaths associated with the tip-over hazard from January 1, 1988, through December 1993. This averages to about 1 death every 3 years. The Commission has received no reports of injuries with the product.

The Commission is issuing a performance standard that will require these devices to have a minimum tip angle greater than 60 degrees. According to the Commission's tests, devices that do not tip over at this angle are not likely to tip while functioning. Thus, the Commission believes that devices meeting this requirement are not likely to fall over while firing, thereby minimizing this risk of death and injury to operators or spectators. The avoidance of these deaths and injuries represents the potential societal benefits of the proposed amendments.

The costs per life saved of this rule are estimated to be between $4.5 and $8 million. These costs are within the range of statistical values of life suggested in the recent professional literature. [22] Given that no significant substitution of more hazardous products is expected, no offsetting reduction in these safety benefits is anticipated. To the extent that nonfatal injuries are avoided, the potential benefits would be somewhat higher.

b. Potential Costs. Most devices that already have bases will not have to be modified to meet the amendments. The devices that are not expected to need to be modified are generally manufactured domestically and, according to the NFA, account for at least 75 percent of the retail dollar volume of the market. It is expected that most of the remaining devices (mainly imports) will be modified to meet the amendments, with a resulting increase in cost of between 25 to 30 percent per modified unit.[8]

In its comments responding to the NPR, AFSL reported that for the 43 units it examined, 65 percent did not meet the 60-degree tip-angle test. The Commission is not using AFSL's estimate of 35 percent compliance with the tip-angle test, since the Commission's staff raised several questions about the accuracy of AFSL's estimate. Thus, the Commission continues to use the industry-wide data provided by NFA to estimate the portion of devices that would require modification (25 percent).

Assuming costs are passed on to consumers (as expected), the total annual cost to consumers of modifying the affected devices would be between $1.5 million and $2.7 million. While certain devices may be discontinued, the loss of consumer choice would be minimized by the availability of close substitutes—i.e., other large multiple-tube devices that comply with the amendments. Additionally, since most suppliers of currently noncomplying devices are expected to maintain current sales levels and pass on costs to consumers, no significant adverse impact is expected in the suppliers' competitive positions.

If the changes eliminate all deaths associated with these devices, the cost per life saved would be between about $4.5 and $8 million. This is within the range of statistical values of life suggested in the recent professional literature. [22]

4. Alternatives to the Rule

The Commission considered several alternatives to the performance standard issued below, including a product ban, deferral to the voluntary standard, and additional labeling.

a. Product Ban. The expected benefits to society of banning all large multiple-tube devices would be one life saved every 3 years, the same as the potential benefits of the amendments. However, costs to society of a ban (as opposed to the performance standard) in terms of lost utility would be greater, because under a ban consumers would not be able to use large multiple-tube devices.

Large multiple-tube devices are unique with respect to the height and duration of their displays. There are no close substitutes for the product. Single-tube devices are available, but they do not provide the rapid sequential display of multiple-tube devices. The lost utility to consumers of not being able to use large multiple-tube devices cannot be measured precisely. However, the fact that consumers are willing to spend $24-$36 million annually to buy these devices suggests that the lost utility could be substantial.

The Commission believes that a ban of all large multiple-tube devices is not necessary, because a performance standard will likely achieve similar benefits with lower costs.

b. Defer to the Voluntary Standard. Another alternative is for the Commission to take no mandatory action, and to depend on a voluntary standard.

The AFSL revised its standard for mines and shells on an interim basis on January 29, 1993, and adopted it on September 5, 1995. In order to address the potential tip-over hazard associated with multiple-tube fireworks devices, AFSL's Voluntary Standard for Mines and Shells—Single or Multiple Shot requires that large multiple-tube devices not tip over (except as the result of the last shot) when fired on a 2-inch thick medium-density foam pad. [14] However, the Commission has concerns about the adequacy of the provisions of, and the level of conformance to, the AFSL standard.

[8] Trade and industry sources report that modifying the devices would add about 25 to 30 percent to production costs (although one commenter on the NPR stated that the per-unit cost increase would be 35 to 45 percent). Various sales catalogs also indicate that comparable devices without bases are significantly less expensive.

The Commission also does not believe that AFSL's existing voluntary standard adequately reduces the risk of injury due to large devices tipping over while functioning. The Commission's tests using polyurethane foam did not find sufficient agreement between tip-over performance on foam and on grass. The Commission has no data that would support AFSL's dynamic test. As explained in section G above, the test results AFSL submitted in response to the NPR were limited and the Commission does not believe they show that this dynamic test is reliable.

In addition, even if the AFSL standard were effective, the Commission concludes that compliance with the standard would not be adequate. The majority of large multiple-tube devices are domestic. In the NPR, the Commission stated that according to AFSL, not a single domestically manufactured device has been certified as complying with the AFSL standard. In comments responding to the NPR, AFSL stated that their standards are voluntary ''and the decision to comply with the standards rests solely with individual manufacturers.'' However, the Commission must have assurance of an adequate level of compliance with a voluntary standard in order to depend on that standard to reduce a risk. AFSL's limited testing conducted in response to the NPR does not substitute for an ongoing and comprehensive testing program.

AFSL reports that some shipments of imported large multiple-tube devices have been tested and certified in China this year and that, since January 1994, 30 percent of the lots it tested were rejected for failure to comply with the AFSL standard. However, the results of CPSC's compliance testing indicate that multiple-tube devices still tip over while functioning in dynamic tests on grass. In fiscal year 1994, all 24 imported devices the Commission tested, and 1 of 8 domestic devices, tipped over while functioning. In fiscal year 1995, 22 of 27 imported devices and 1 of 5 domestic devices tipped over. [19]

c. Additional Labeling

The current product has extensive labeling. The text of the labels required by the Commission is quoted in section D above. One alternative available to the Commission is to add further warning or instructional labeling to large multiple-tube devices or to modify the existing warning. Although this may have less impact on manufacturers and importers than a performance standard, the Commission believes that any additional or altered labeling is unlikely to be effective in reducing the risk of injury.

Fireworks are frequently used at night, reducing the likelihood that warning labels will be read. The fact that fireworks are commonly used at parties or celebrations further reduces the likelihood that the user will read and follow a warning label. Moreover, tip-over may occur even if the user reads and follows the warning label. In both incidents involving large multiple-tube devices, the victims were spectators who were approximately 40 feet (12 meters) away from the device, which they probably believed was a safe distance. The devices were placed on smooth, hard surfaces, although one was angled to shoot over a lake. In light of these facts, it is unlikely that a warning label would have prevented these deaths. [1, Tab E]

K. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act, 5 U.S.C. §§ 601–612, agencies generally are required to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. However, these analyses are not required if the head of the agency certifies that the rule will not have a significant effect on a substantial number of small entities. As described below, the Commission has analyzed the potential effect of the amendment on industry.

The Commission has determined that the proposed standard will not have a significant impact on a substantial number of small businesses. The devices subject to the standard constitute less than 1 percent of the overall fireworks market. The foreign firms that make the types of devices subject to this rule that are likely to require modification in order to comply also make other types of fireworks. Only a small portion of the total production of these firms involves the large multiple-tube devices subject to the rule. Thus, the Commission certifies that no significant adverse impact on a substantial number of small firms, or other entities, will result from the amendment issued below.

L. Environmental Considerations

The Commission's regulations governing environmental review procedures state that the amendment of rules or safety standards establishing design or performance requirements for products normally have little or no potential for affecting the human environment. 16 CFR 1021.6(c)(1). The Commission does not foresee that this amendment to the existing fireworks regulations will involve any special or unusual circumstances that would alter this conclusion. The Commission determines, therefore, that no significant environmental effects will result from the standard. Accordingly, no environmental assessment or environmental impact statement is required in this proceeding.

M. Effective Date

The rule will take effect in 1 year and will apply to multiple-tube fireworks devices with any tube measuring 1.5 inches or more in inner diameter that first enter commerce or are imported on or after the effective date. However, provisions may be stayed by the filing of proper objections. Notice of the filing of any objections or lack thereof will be given by publication in the Federal Register.

List of Subjects in 16 CFR Part 1500

Consumer protection, Hazardous materials, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, and Toys.

Conclusion

For the reasons given above, the Commission finds that cautionary labeling required by the FHSA is not adequate for multiple-tube devices having any tube 1.5 inches (3.8 cm) or larger in inner diameter and having a minimum tip angle larger than 60 degrees. Further, in order to protect the public health and safety and due to the degree and nature of the tip-over hazard presented by these devices, it is necessary to keep them out of commerce if they fail to meet this standard. Thus, the Commission amends Parts 1500 and 1507 Title 16 of the Code of Federal Regulations as follows:

PART 1500—[AMENDED]

1. The authority for Part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261–1278

2. Section 1500.17 is amended by adding a new paragraph (a)(12) to read as follows:

§ 1500.17 Banned hazardous substances.

* * * * *

(a) * * *

(12) (i) *Large multiple-tube devices.* Multiple-tube mine and shell fireworks devices that first enter commerce or are imported on or after [insert date that is 1 year after publication], that have any tube measuring 1.5 inches (3.8 cm) or more in inner diameter, and that have a minimum tip angle greater than 60 degrees when tested in accordance with the procedure of § 1507.12 of this part.

(ii) *Findings.* (A) *General.* In order to issue a rule under the section 2(q)(1) of the FHSA, 15 U.S.C. 1261(q)(1), classifying a substance or article as a banned hazardous substance, the FHSA requires the Commission to make certain findings and to include these in the regulation. These findings are discussed in paragraphs (a)(12)(ii)(B) through (D) of this section.

(B) *Voluntary standard.* (*1*) One alternative to the tip-angle requirement that the Commission considered is to take no mandatory action, and to depend on a voluntary standard. The American Fireworks Safety Laboratory (AFSL) has a standard for mines and shells intended to address the potential tip-over hazard associated with multiple-tube fireworks devices. AFSL's Voluntary Standard for Mines and Shells—Single or Multiple Shot requires that large multiple-tube devices not tip over (except as the result of the last shot) when shot on a 2-inch thick medium-density foam pad. The Commission cannot conclude that AFSL's existing voluntary standard adequately reduces the risk of injury from large devices that tip over while functioning. The Commission's tests using polyurethane foam did not find sufficient agreement between performance on foam and on grass. No other data are available to show that this dynamic test is reliable.

(*2*) In addition, even if the AFSL standard is effective, the Commission does not believe that compliance with the standard will be adequate. AFSL reports that it has been testing in accordance with its standard since January 1994. However, the results of CPSC's compliance testing indicate that multiple-tube devices still tip over while functioning. In fiscal year 1994, all 24 imported devices the Commission tested, and 1 of 8 domestic devices, tipped over while functioning. In fiscal year 1995, 22 of 27 imported devices and 1 of 5 domestic devices tipped over during Commission testing. The Commission finds that there is unlikely to be substantial compliance with the voluntary standard applicable to multiple-tube devices.

(C) *Relationship of benefits to costs.* The Commission estimates that the 60-degree tip-angle standard will eliminate the unreasonable tip-over risk posed by these devices. This will provide benefits of saving one life about every 3 years, and preventing an unknown number of nonfatal injuries. The annual cost of modifying affected devices is estimated to be between $1.5 million and $2.7 million. The Commission finds that the benefits from the regulation bear a reasonable relationship to its costs.

(D) *Least burdensome requirement.* The Commission considered the following alternatives: a ban of all multiple-tube devices with inner tube diameters 1.5 inches or greater; a dynamic performance standard; additional labeling requirements; and relying on the voluntary standard. Although a ban of all large multiple-tube devices would address the risk of injury, it would be more burdensome than the tip-angle standard. The Commission was unable to develop a satisfactory dynamic standard that would reduce the risk of injury. Neither additional labeling requirements nor reliance on the voluntary standard would adequately reduce the risk of injury. Thus, the Commission finds that a standard requiring large multiple-tube devices to have a minimum tip angle greater than 60 degrees is the least burdensome requirement that would prevent or adequately reduce the risk of injury.

PART 1507—[AMENDED]

1. The authority for Part 1507 continues to read as follows:

Authority: Sec. 2(q)(1)(B), (2), 74 Stat. 374 as amended 80 Stat. 1304–1305; (15 U.S.C. 1261); sec. 701(e), 52 Stat. 1055 as amended; 21 U.S.C. 371(e)); sec. 30(a), 86 Stat. 1231; 15 U.S.C. 2079(a)).

2. Part 1507 is amended by adding a new § 1507.12 to read as follows:

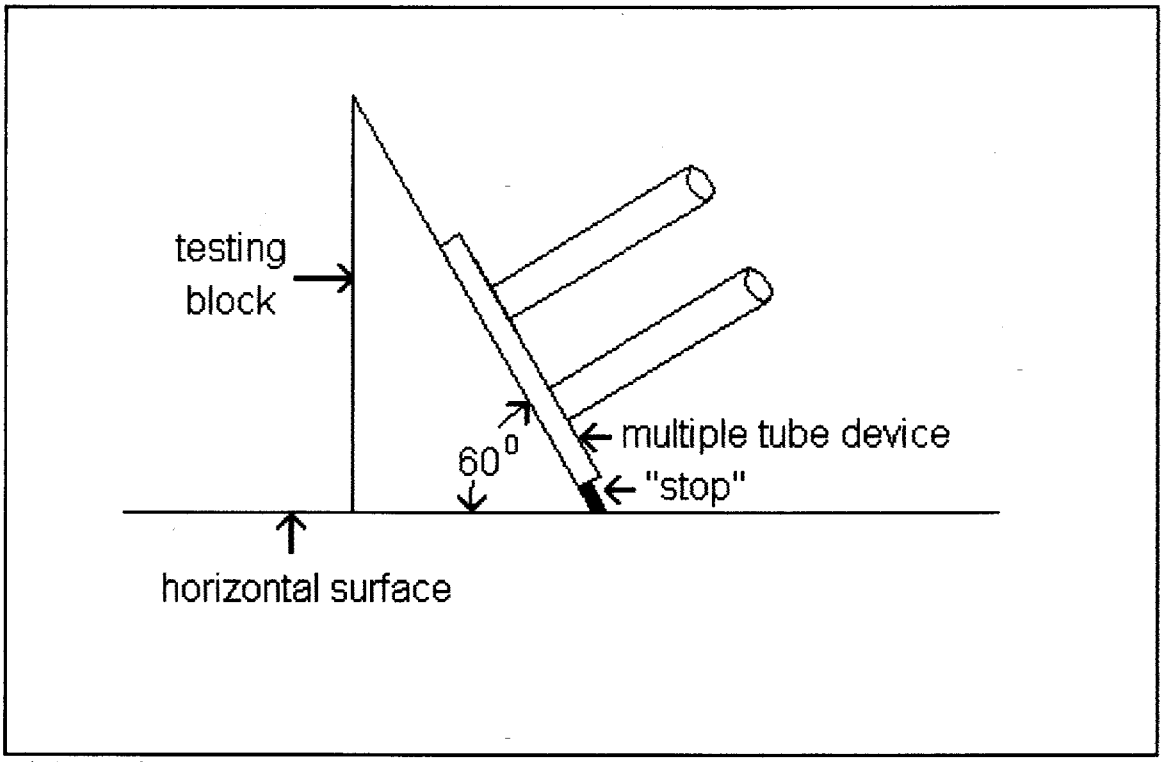
§ 1507.12 Multiple-tube Fireworks Devices.

(a) *Application.* Multiple-tube mine and shell fireworks devices with any tube measuring 1.5 inches (3.8 cm) or more in inside diameter and subject to § 1500.17(a)(12) of this part shall not tip over when subjected to the tip-angle test described in this section.

(b) *Testing procedure.* The device shall be placed on a smooth surface that can be inclined at 60 degrees from the horizontal, as shown in Figure 1 of this section. The height and width of the inclined plane (not including the portion of the plane below the mechanical stop) shall be at least 1 inch (2.54 cm) greater than the largest dimension of the base of the device to be tested. The test shall be conducted on a smooth, hard surface that is horizontal as measured by a spirit level or equivalent instrument. The mechanical stop on the inclined plane shall be 1/16 inches (1.6 mm) in height and perpendicular to the inclined plane. The stop shall be positioned parallel to the bottom edge of the inclined plane and so that no portion of the device to be tested or its base touches the horizontal surface. The device shall not tip over when the plane is inclined at 60-degrees from the horizontal. The procedure shall be repeated for each edge of the device.

Figure 1 to § 1507.12

BILLING CODE 6355–01–P



Side view of an apparatus or testing block for testing compliance with the proposed 60-degree tilt angle standard.

BILLING CODE 6355–01–C

Dated: March, 18, 1996.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Reference Documents. (The following list of documents will not be printed in the Code of Federal Regulations.)

The following documents contain information relevant to this rulemaking proceeding and are available for inspection at the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814:

1. Multiple-tube Mine and Shell Fireworks Devices: Advance Notice of Proposed Rulemaking; Request for Comments and Information, 59 Fed. Reg. 33928 (July 1, 1994).

2. Briefing Package: Multiple-tube Mine and Shell Fireworks Devices, Consumer Product Safety Commission, May 31, 1994.

3. Briefing Memorandum on Multiple-tube Mine and Shell Fireworks Devices, from Ronald L. Medford, EXHR and Michael Babich, EHHE, to the Commission, June 8, 1995.

4. Memorandum from Michael Babich, Project Manager, HSHE, ''Responses to Public Comments on Multiple-tube Mine and Shell Devices,'' May 22, 1995.

5. Memorandum from Leonard Schachter, EPHA, to Michael Babich, HSHE, ''Annual Estimated Injuries Associated with Multiple-tube Mine and Shell Fireworks Devices,'' June 1, 1995.

6. Memorandum from James Carleton and Jay Sonenthal, LSHS, to Michael Babich, HSHE, ''Results for Dynamic Stability Testing of Large Multiple-tube Mine and Shell Devices,'' May 18, 1995.

7. Memorandum from Thomas Caton, ESME, to Michael Babich, HSHE, ''Fireworks Testing: Test Surface Roughness,'' May 22, 1995.

8. Report from Terry Kissinger, EPHA, to Michael Babich, HSHE, ''A Comparison of the Tip-over Performances of Multiple-tube Mine and Shell Devices on Grass and Foam,'' January 1995.

9. Memorandum from George F. Sushinsky, LSEL, to Michael Babich, HSHE, ''Dimensional and Stability Measurements of Fireworks,'' March 10, 1995.

10. Memorandum from George F. Sushinsky, LSEL, to Michael Babich, HSHE, ''Tip Angle Measurements of a Device with a Plastic Base,'' April 13, 1995.

11. Memorandum from Jay Sonenthal, LSHL, to Michael Babich, HSHE, ''Test of a Device with a Plastic Base,'' May 22, 1995.

12. Memorandum from Sam Hall, CERM, to Michael Babich, HSHE, ''Acceptable Tipover Rate for Multiple-tube Devices,'' November 21, 1994.

13. Memorandum from Anthony Homan, ECPA, to Michael Babich, HSHE, ''Multiple-tube Mine and Shell Fireworks Devices—Regulatory Analysis,'' May 18, 1995.

14. Memorandum from Sam Hall, CERM, to Michael Babich, HSHE, ''AFSL's Interim Voluntary Standard for Large Multiple-tube Mine and Shell Devices and Staff's Proposed Mandatory Static Performance Standard, May 25, 1995.

15. Product and Performance Standard for Mines and Shells—Single or Multiple Shot,'' Version 1.1, American Fireworks Standards Laboratory, Bethesda, Maryland, January 28, 1993.

16. Memorandum from Neal Gasser, LSHL, to Michael Babich, HSHE, ''Additional Tests of Multiple-tube Mine and Shell Devices,'' June 8, 1995.

17. Briefing Memorandum on Multiple-tube Mine and Shell Fireworks Devices—Final Rule, from Michael Babich, EHHE, and Ronald L. Medford, HIR, to the Commission, January 23, 1996.

18. Memorandum from Michael A. Babich, EHHE, ''Responses to Comments on Multiple-tube Mine and Shell Devices,'' January 16, 1996.

19. Memorandum from Samuel B. Hall, CRM, to Michael Babich, HSHE, ''Compliance Tests of Large Multiple-tube Mine and Shell Devices under FY 1994 and FY 1995 Fireworks Enforcement Programs,'' December 8, 1995.

20. Memorandum from Leonard Schacter, EHHA, to Michael Babich, HSHE, ''Annual Estimated Injuries Associated with Multiple-tube Mine and Shell Fireworks Devices,'' November 1, 1995.

21. Memorandum from Anthony Homan, ECPA, to Michael Babich, HSHE, ''Multiple-tube Mine and Shell Fireworks Devices—Final Regulatory Analysis,'' January 16, 1996.

22. Viscusi, W.K., ''The Value of Risks to Life and Health,'' Journal of Economic Literature, December 1993.

23. Kissinger, T.L., Fireworks Injuries—results of a 1992 NEISS study. U.S. Consumer Product Safety Commission, Washington, DC 20207. September 1993.

[FR Doc. 96–6857 Filed 3–25–96; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–96–010]

Drawbridge Operation Regulations: Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of deviation from regulations and request for comments.

SUMMARY: Notice is hereby given that the Coast Guard issuing a temporary deviation to the regulations governing the J.D. Butler (Hillsboro Boulevard, State Road 810) drawbridge, mile 1050.0, at Deerfield Beach, from March 1, 1996 through May 30, 1996. This deviation authorizes the bridge owner to open the draw on signal, except that, from 7 a.m. to 6 p.m., Monday through Thursday, the draw need open only on the hour, 20 minutes after the hour, and forty minutes after the hour; and from 7 a.m. to 6 p.m., Friday through Sunday and federal holidays, the draw need open only on the hour and half-hour. The purpose of this temporary change in opening schedule from Friday through Sunday and federal holidays is to test the feasibility of establishing a permanent change to the seasonal opening restrictions to reduce severe vehicular traffic congestion without unreasonably impacting navigation.

DATES: This deviation is effective from March 1, 1996 through May 30, 1996, unless sooner terminated. Comments on the alternate schedule must be received on or before May 30, 1996.

ADDRESSES: Comments may be mailed to Commander (oan), Seventh Coast Guard District, Brickell Plaza Federal Building, Room 406, 909 SE. 1st Avenue, Miami, Florida 33131–3050. The comments and other materials referenced in this notice will be available for inspection and copying at the above address. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except federal holidays. Comments may also be hand-delivered to the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Brodie Rich, Bridge Management Specialist, Seventh Coast Guard District, at 305–536–5117.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this evaluation of possible changes to the regulations governing the J.D. Butler Drawbridge over the Atlantic Intracoastal Waterway by submitting written data, or arguments for or against this deviation. Persons submitting comments should include their name, address, identify this rulemaking (CGD07–96–010) and give the reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period and determine whether to initiate a rulemaking to propose a permanent change to the drawbridge operation schedule. Persons may submit comments by writing to the Commander (oan), Seventh Coast Guard District listed under **ADDRESSES**.

Background and Purpose

The City of Deerfield Beach has requested a change from the current seasonal operating schedule in Title 33 CFR 117.261(bb) to a year-round hour and half-hour opening schedule. A Coast Guard analysis of highway traffic and bridge opening data provided by the Florida Department of Transportation which was completed on May 8, 1995, indicated the heavy traffic congestion is limited to weekends during the winter tourist season. This deviation will allow a test of the proposed hour and half-hour opening schedule during the heaviest highway and waterway traffic periods. If the test reduces highway traffic congestion without unreasonably impacting navigation, the Coast Guard plans to publish a Notice of Proposed Rulemaking which will request comments on a permanent change to the regulations.

Public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property shall, upon proper signal, be passed through the draw at any time.

This deviation from normal operating regulations (33 CFR 117.5) is authorized in accordance with the provisions of title 33 of the Code of Federal Regulations, § 117.43.

Dated: March 7, 1996.

P.J. Cardaci,

Captain U.S. Coast Guard, Commander, Seventh Coast Guard District, Acting.

[FR Doc. 96–7171 Filed 3–25–96; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Parts 154 and 155

46 CFR Parts 12, 13, 15, 30, 31, 35, 78, 90, 97, 98, 105, 151, 153, and 154

[Docket No. CGD–79–116]

RIN 2115–AA03

Qualifications for Tankermen, and for Persons in Charge of Transfers of Dangerous Liquids and Liquefied Gases

AGENCY: Coast Guard, DOT.

ACTION: Reopening of Comment Period on interim rule.

SUMMARY: The Coast Guard is reopening the period for public comment on its Interim Rule on the Qualifications for Tankermen, and for Persons in Charge of Transfers of Dangerous Liquids and Liquefied Gases. It would like public help in treating certain issues.

DATES: The effective date remains March 31, 1996. Written comments must be received not later than May 28, 1996.

ADDRESSES: Written comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA, 3406), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments will become part of this docket and will be available for inspection or copying at room 3406, Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Mark C. Gould, Project Manager, Marine Safety and Environmental Protection Directorate, Office of Maritime Personnel Qualifications (G–MOS–1), (202) 267–6890. This telephone is equipped to record messages on a 24-hour basis.

SUPPLEMENTARY INFORMATION: On Tuesday, April 4, 1995 [60 FR 17134], the Coast Guard issued an Interim Rule on the Qualifications for Tankermen, and for Persons in Charge of Transfers of Dangerous Liquids and Liquefied Gases. The deadline for written comments was June 30, 1995.

Comments submitted during the comment period by the public and further evaluation of the Interim Rule by the Coast Guard revealed certain issues that require further evaluation, clarification, or correction. The Coast Guard has, therefore, decided to reopen the comment period. There is no need to refile comments already submitted. The effective date of the Interim Rule remains March 31, 1996.

Although the Coast Guard invites comments on any feature of the Interim Rule, it specifically invites comments on the following:

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

Section 155.710 Qualifications of person in charge.

Paragraphs (a)(2)(ii), (b)(2), and (g) allow the PIC of cargo-tank cleaning on a vessel at a tank-cleaning facility or shipyard to hold a marine chemist's certificate issued by the National Fire Protection Association instead of the appropriate Tankerman-PIC endorsement. Numerous comments on the Interim Rule objected to this alternative. They stated that no marine chemist is qualified to act as a Tankerman-PIC. The Coast Guard will compare the qualifications for marine chemists with those for Tankerman-PICs. It invites comments.

TITLE 46—SHIPPING

Section 13.107 Tankerman endorsement: General.

Section 15.860 Tankerman.

There appears to be some confusion and disagreement regarding the term *direct supervision* as used in these sections. The Coast Guard defines being under *direct supervision* to mean being within the unobstructed view of the supervisor. If the PIC assigns a person to turn a particular value, and if this person bends down so that either the hands or the valve is not visible to the PIC, this person is not under direct supervision of the PIC. A fair equivalent might be being in ''direct line of sight of the supervisor, or in close proximity to the transfer and maintaining direct, continuous communications by a convenient, reliable means, such as a hand-held radio.'' The Coast Guard invites comments.

Section 13.111 Restricted endorsement.

This section lets an applicant apply for a tankerman endorsement restricted to specific cargoes or groups of cargoes, specific vessels, specific facilities, specific employers, or the like. The Coast Guard intended for this endorsement to benefit oil and chemical companies that handle only one or two cargoes or that employ a small number of tankerman, who conduct transfers at a small number of sites. This endorsement would relieve its holders of having to take the DL or LG course because those holders would have frequent opportunity to observe and participate in local transfers and would have no need to observe or participate in others. The Coast Guard did not intend that a large oil or chemical company could employ a large number of tankermen with restricted endorsements. It invites comments.

Section 13.113 Tankerman certified under prior regulations.

Paragraph (a) allows certain persons who have acted as Tankermen-PICs before March 31, 1996, to continue in that capacity. However, paragraph (d)(1)(iii)(A)(1) does not require any particular period of sea service, and paragraphs (d)(1)(iii)(A)(2) and (d)(1)(iii)(B) require only 30 days of sea service. None of these sections comply with the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW), as amended in 1994, which requires 90 days of sea service on tankers. Since the United States is signatory to STCW, the Coast Guard considers itself bound to amend paragraphs (d)(1)(iii)(A)(1), (d)(1)(iii)(A)(2), and (d)(1)(iii)(B) to require 90 days of sea service on tankers. It invites comments.

Section 13.115 Licensed engineer: Endorsement as Tankerman-Engineer based on service on tankships before March 31, 1996.

This section requires that a licensed person with service as chief, first assistant, or cargo engineer before March 31, 1996, obtain a Tankerman-Engineer endorsement to his or her MMD no later than the first renewal of the MMD after March 31, 1997, if he or she intends to continue in any of those capacities. The Coast Guard intends that the final rule will allow service by one carrying temporary proof of the tankerman's qualifications as § 13.113 did for Tankerman-PIC or Tankerman-PIC (Barge). But, as we have just seen, § 13.113 itself comes up short—60 days short—measured against STCW, as amended in 1994. Therefore, to provide for an orderly transition to a regime governed by STCW, as amended in 1994, as well as to square § 13.115 with § 13.113 in its STCW-compatible form, the Coast Guard considers itself bound to amend paragraphs (a) and (b) to require 90 days of sea service on tankers. It invites comments.

In addition, STCW, as amended in 1994, requires that an applicant for this endorsement satisfactorily complete the appropriate DL or LG course. The Coast Guard is inclined to amend this section to require satisfactory completion of a DL or LG course. However, the Coast Guard is willing to consider deferring the course requirement for a limited period of time, to give mariners a reasonable period of time to satisfactorily complete the course. It invites comments.

Section 13.117 Any person: Endorsement as Tankerman-Assistant based on unlicensed deck service before March 31, 1996.

This section requires that a person with unlicensed deck service before March 31, 1996, obtain a Tankerman-Assistant endorsement to his or her MMD no later than the first renewal of the MMD after March 31, 1997, if he or she intends to continue in that capacity. The Coast Guard intends that the final rule will allow service by one carrying temporary proof of the tankerman's qualifications as § 13.113 did for Tankerman-PIC or Tankerman-PIC (Barge). But, again as we have just seen, § 13.113 itself comes up short—60 days short—measured against STCW, as amended in 1994. Therefore, to provide for an orderly transition to a regime governed by STCW, as amended in 1994, as well as to square § 13.117 with § 13.113 in its STCW-compatible form, the Coast Guard considers itself bound to amend paragraphs (a) and (b) to require 90 days of sea service on tankers. It invites comments.

Further, STCW, as amended in 1994, allows an applicant for this endorsement to satisfactorily complete a tanker-familiarization course rather than satisfy paragraph (a) or (b). Therefore, the Coast Guard is inclined to amend this section to allow satisfactory completion of this course, too. It invites comments.

Further yet, STCW, as amended in 1994, requires that an application for this endorsement satisfactorily complete a firefighting course. The Coast Guard is included to amend this section to require satisfactory completion of this course, too. It invites comments.

For the Tankerman-Assistant endorsement, the Coast Guard will accept pumpman service as well as the deck service described in §§ 13.117 and 13.403. It invites comments.

Section 13.409 Eligibility requirements: Cargo course.

This section allows an applicant for an endorsement as Tankerman-Assistant to substitute sea service for satisfactory completion of a course in DL or LG. But STCW, as amended in 1994, requires the same applicants to either (1) satisfactorily complete a tanker-familiarization course or (2) prove 90 days of sea service on tankers. Therefore, the Coast Guard considers itself bound to amend this section to require either (1) satisfactory completion of a tanker-familiarization

course, rather than of a course in DL or LG, or (2) 90 days of sea service on tankers, rather than an unspecified amount of sea service of an unspecified kind. It invites comments.

Section 13.503 Eligibility requirements: Experience.

This section allows an applicant for an endorsement as Tankerman-Engineer to combine sea service and satisfactory completion of a DL or LG course for the requisite experience. But STCW, as amended in 1994, requires that the same applicant both satisfactorily complete the appropriate DL or LG course and prove 90 days of sea service on tankers. Therefore, the Coast Guard is inclined to amend this section to require both, rather than some blend of them. It invites comments.

Section 13.509 Eligibility requirements: Cargo course.

This section allows an applicant for an endorsement as Tankerman-Engineer to substitute sea service for satisfactory completion of a course in DL or LG. But STCW, as amended in 1994, requires that the same applicant both satisfactorily complete the appropriate DL or LG course and prove 90 days of sea service on tankers. Therefore, the Coast Guard is inclined to amend this section to require both, rather than some blend of them. It invites comments.

Dated: March 15, 1996.

J.C. Card,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 96–7169 Filed 3–25–96; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD02–96–078]

RIN 2115–AA97

Safety Zone; Lower Mississippi River, Mile 631.0 to Mile 635.0

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Lower Mississippi River between mile 631.0 and mile 635.0. This regulation is needed to restrict vessel traffic in the regulated area to prevent a collision with a sunken barge, surveying and salvage equipment and to provide a safe work area for survey and salvage personnel.

DATES: This regulation is effective from 11 p.m. on March 12, 1996, and terminates at 8 a.m. on September 31, 1996.

FOR FURTHER INFORMATION CONTACT:

LT Byron Black, Chief, Port Operations, Captain of the Port, 200 Jefferson Avenue, Suite 1301, Memphis, TN 38103, Phone: (901) 544–3941.

SUPPLEMENTARY INFORMATION:

Background and Purpose

At approximately 10:10 p.m. on March 12, 1996, the M/V ROBERT A KYLE reported that one iron barge had sunk at approximate mile 633.0 on the Lower Mississippi River. The sunken barge's exact location remains unknown and survey operations at Lower Mississippi River mile 633.0 will commence shortly. The navigable channel will be blocked during survey and salvage operations. A safety zone has been established on the Lower Mississippi River from mile 631.0 to mile 635.0 in order to facilitate safe vessel passage. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary. Specifically, immediate action is necessary to facilitate the survey for the sunken barge's exact location. Harm to the public or environment may result if vessel traffic is not controlled during the operations. As a result, the Coast Guard deems it to be in the public's best interest to issue a regulation immediately.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require and assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Collection of information

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

Federalism

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

Environment

Teh Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B (as revised by 59 FR 38654; July 29, 1994), this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; and 49 CFR 1.46.

2. A new temporary section 165.T02–078 is added to read as follows:

§ 165.T02–078 Safety Zone; Lower Mississippi River.

(a) *Location.* The following area is a Safety Zone: Lower Mississippi River mile 631.0 to mile 635.0.

(b) *Effective dates.* This section is effective from 11 p.m. on March 12, 1996, and terminates at 8 a.m. on September 31, 1996.

(c) *Regulations.* In accordance with the general regulations in § 165.23, entry into this zone is prohibited except as authorized by the Captain of the Port. The Captain of the Port, Memphis, Tennessee, will notify the maritime community of conditions affecting the area covered by this safety zone by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

Dated: March 12, 1996.

P.L. Mountcastle,

Lieutenant Commander, USCG, Acting Captain of the Port.

[FR Doc. 96–7305 Filed 3–25–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE26–1–6940; FRL–5444–8]

Approval and Promulgation of Air Quality Implementation Plans; Delaware: Amendment of Final Rule Pertaining to Regulation 24—Control of Volatile Organic Compound Emissions, Section 47—Offset Lithographic Printing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Amendment of direct final rule.

SUMMARY: On January 26, 1996, EPA published approval of a State Implementation Plan (SIP) revision submitted by Delaware (61 FR 2419) pertaining to Delaware Regulation 24, Control of Volatile Organic Compound Emissions, sections 10, 11, 12, 44, 45, 47, 48, and 49, and Appendices I, K, L, and M, effective November 29, 1994. These sections of Regulation 24 establish additional emission standards that represent the application of reasonably available control technology (RACT) to categories of stationary sources of volatile organic compounds (VOCs). This action was published without prior proposal. Because EPA received adverse comments on a section of this action, EPA is withdrawing the reference pertaining to Regulation 24, section 47, Offset Lithographic Printing.

EFFECTIVE DATE: March 26, 1996.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 597–3164.

SUPPLEMENTARY INFORMATION: EPA approved this direct final rule without prior proposal because the agency viewed it as a noncontroversial amendment and anticipated no adverse comments. The direct final rule was published, without prior proposal, in the Federal Register (61 FR 2419) with a provision for a 30 day comment period. At the same time, EPA published a proposed rule which announced that this final rule would convert to a proposed rule in the event that adverse comments were submitted to EPA within 30 days of publication of the rule in the Federal Register (61 FR 2464). By publishing a document announcing withdrawal of the final rule action, this action would be withdrawn. EPA received adverse comments within the prescribed comment period on section 47, Offset Lithographic Printing. Therefore, EPA is withdrawing the reference pertaining to Regulation 24, section 47 only. All public comments received will be addressed in a subsequent rulemaking action based on the proposed rule.

List of Subjects in 40 CFR Part 52

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

Dated: March 14, 1996.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

Accordingly, 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7402–7671q.

§ 54.420 [Amended]

2. In § 54.420(c)(54)(i)(B), the number ''47'' is removed.

[FR Doc. 96–7063 Filed 3–25–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[TN-CHAT–95–01; FRL–5445–8]

Clean Air Act Final Full Approval of Operating Permits Program; Hamilton County, Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final full approval.

SUMMARY: EPA is promulgating full approval of the title V operating permits program submitted by the State of Tennessee on behalf of the Chattanooga-Hamilton County Air Pollution Control Bureau (CHCAPCB). The CHCAPCB program was submitted for the purpose of complying with Federal requirements which mandate that states or local authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

EFFECTIVE DATE: April 25, 1996.

ADDRESSES: Copies of the CHCAPCB submittal and other supporting information used in developing the final full approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, 345 Courtland Street NE, Atlanta, Georgia 30365. Interested persons wanting to examine these documents, contained in EPA docket number TN-CHAT–95–01, should make an appointment at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Kelly Fortin, Title V Program Development Team, Air Programs Branch, Air, Pesticides & Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street NE, Atlanta, Georgia 30365, (404) 347–3555, Ext. 4150.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (the Act)) and the implementing regulations at 40 Code of Federal Regulations (CFR) part 70 require that states or authorized local agencies develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. If the permitting authority's submission is materially changed during the one-year period, 40 CFR 70.4(e)(2) allows EPA to extend the review period for no more than one year following the receipt of the additional materials.

EPA's operating permit program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by November 15, 1995, or by the end of an interim program, it must establish and implement a Federal operating permit program for that state or local agency.

On November 8, 1995, EPA proposed full approval, or in the alternative, interim approval of the operating permits program for CHCAPCB in the Federal Register. See 60 FR 56285. The Federal Register notice stated that, as a condition of full approval, certain revisions or clarifications were required in the insignificant activities list contained in CHCAPCB's program. The above-referenced Federal Register notice and the technical support document describe in detail the changes required for full program approval. The November 8, 1995, notice also proposed approval of CHCAPCB's interim mechanism for implementing section 112(g) and for delegation of section 112 standards as promulgated. EPA did not receive any comments on the proposal notice.

On March 14, 1996, the State of Tennessee submitted, on behalf of CHCAPCB, revisions to the operating

permits program that addressed the deficiencies discussed in the proposed full/interim approval Federal Register notice. These changes became locally effective on the following dates: February 7, 1996, in the unincorporated areas of Hamilton County and in the East Ridge municipality; March 6, 1996, in the City of Chattanooga; March 7, 1996, in the Soddy-Daisy municipality; March 11, 1996, in the Signal Mountain municipality; March 12, 1996, in the Lookout Mountain and Walden municipalities; March 18, 1996, in the Collegedale municipality; March 19, 1996, in the Red Bank municipality; and March 21, 1996, in the Lakesite municipality. The changes will become locally effective in the Ridgeside municipality on April 16, 1996. In this action, EPA is promulgating full approval of the CHCAPCB operating permits program, and approving the section 112(g) and section 112(l) mechanisms noted above.

II. Final Action and Implications

A. Title V Operating Permits Program

EPA is promulgating full approval of the operating permits program submitted by the State of Tennessee, on behalf of CHCAPCB, on November 22, 1993, and as supplemented on January 23, 1995, February 24, 1995, October 13, 1995, and March 14, 1995. The November 8, 1995, Federal Register notice established that CHCAPCB would receive full approval of its program if certain changes were made to the insignificant activities provisions of the program and submitted to EPA prior to EPA's final action. CHCAPCB has demonstrated that the program will be adequate to meet the minimum elements of a local operating permits program as specified in 40 CFR part 70.

The scope of the CHCAPCB program that EPA is approving in this action applies to all part 70 sources (as defined in the approved program) within Hamilton County, except any sources of air pollution over which an Indian Tribe has jurisdiction. *See, e.g.*, 59 FR 55813, 55815–18 (November 9, 1994). The term ''Indian Tribe'' is defined under the Act as ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' *See* section 302(r) of the CAA; *see also* 59 FR 43956, 43962 (August 25, 1994); 58 FR 54364 (October 21, 1993).

The Chattanooga-Hamilton County Air Pollution Control Board, operating under a certificate of exemption pursuant to Tennessee Code Annotated, Section 68–201–115, has authority to administer the operating permits program in all areas of Hamilton County, Tennessee, with the exception of Indian reservations and tribal lands. The CHCAPCB program is implemented and enforced through: (1) the Chattanooga Air Pollution Control Code (within the incorporated municipality of the City of Chattanooga, Tennessee); (2) the Hamilton County Air Pollution Control Regulation (in the unincorporated areas of Hamilton County, Tennessee); and (3) the air pollution control ordinances prepared for and enacted in the incorporated municipalities of East Ridge, Red Bank, Soddy-Daisy, Signal Mountain, Lakesite, Walden, Collegedale, Lookout Mountain, and Ridgeside.

B. Preconstruction Permit Program Implementing Section 112(g)

EPA is approving the use of CHCAPCB's preconstruction review program found in section 4–8 of the Chattanooga Code and the corresponding sections of the Hamilton County and local municipalities' regulations as the mechanism for implementing section 112(g) during the transition period between promulgation of EPA's section 112(g) rule and CHCAPCB's adoption of rules specifically designed to implement section 112(g). This approval is limited to the implementation of the 112(g) rule and is effective only during any transition time between the effective date of the 112(g) rule and the adoption of specific rules by CHCAPCB to implement section 112(g). The duration of this approval is limited to 18 months following promulgation by EPA of section 112(g) regulations, to provide Hamilton County, the City of Chattanooga, and the affected municipalities with adequate time to adopt regulations consistent with Federal requirements.

C. Program for Delegation of Section 112 Standards as Promulgated

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that CHCAPCB's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also promulgating approval under section 112(l)(5) and 40 CFR 63.91 of CHCAPCB's program for receiving delegation of section 112 standards and programs that are unchanged from Federal rules as promulgated. In addition, EPA is approving the delegation of all existing standards and programs under 40 CFR parts 61 and 63. This program for delegation applies to both part 70 sources and non-part 70 sources.

III. Administrative Requirements

A. Docket

Copies of the CHCAPCB submittal and other information relied upon for this final full approval action are contained in docket number TN-CHAT–95–01 maintained at the EPA Region 4 office. The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this action. The docket is available for public inspection at the location listed previously in the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act of 1995

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

EPA has determined that the final full approval promulgated in this document does not include a Federal 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 Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: March 15, 1996.

Phyllis P. Harris,

Acting Regional Administrator.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

2. In appendix A to part 70 the entry for Tennessee is amended by redesignating paragraph (b) as (d), by adding and reserving paragraph (c), and by adding a new paragraph (b) to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Tennessee

(a) [Reserved]

(b) Chattanooga-Hamilton County Air Pollution Control Bureau, Hamilton County, State of Tennessee: submitted on November 22, 1993, and supplemented on January 23, 1995, February 24, 1995, October 13, 1995, and March 14, 1996; full approval effective on April 25, 1996.

* * * * *

[FR Doc. 96–7166 Filed 3–25–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 261

[FRL–5446–2]

RIN 2050–AE31

Identification and Listing of Hazardous Waste; Amendments to Definition of Solid Waste

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: EPA is correcting the text of a regulatory exclusion from the regulatory definition of solid waste for recovered oil which is inserted into the petroleum refining process. The current text of the exclusion contains a factual error as to the location in the refining process at which recovered oil can be inserted. The result of this error is to inappropriately restrict legitimate recycling of recovered oil. The corrected rule also in fact reflects the result EPA initially intended, which was to condition the exclusion of recovered oil on that oil being reinserted into the petroleum refining process at a point where that process removes or will remove at least some contaminants.

In the proposed rules Section of today's Federal Register, EPA is proposing this identical correction and soliciting public comment on this correction. If adverse comments are received, EPA will withdraw this direct final rule and address the comments in a subsequent final rule. EPA will not provide additional opportunity for comment on the correction.

DATES: This final action will become effective on May 28, 1996, unless EPA is notified by April 9, 1996, that any person wishes to submit adverse comment. If such notification is received and EPA withdraws this final rule, then timely notice will be published in the Federal Register.

ADDRESSES: Comments and materials supporting this rulemaking are contained in Public Docket No. F–96–SW2F-FFFFF and are located in the EPA RCRA docket, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA. The docket is open from 9:00 to 4:00, Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling (703) 603–9230. The public may copy a maximum of 100 pages from any one regulatory docket at no cost. Additional copies cost § .15 per page. Persons wishing to notify EPA of their intent to submit adverse comments on this action should contact Steven Silverman, Office of General Counsel (2366), 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Steven Silverman, (202) 260–7716, Office of General Counsel at the above address.

SUPPLEMENTARY INFORMATION:

Outline of Today's Action

I. Authority
II. Background
III. Clarification of Issues Discussed in the Preamble
A. Status of Recovered Oil from Refineries with Synthetic Organic Chemical Manufacturing Industry (SOCMI) Units
B. Status of Recovered Oil from Co-Located Petroleum Refineries and Petrochemical Facilities
C. Recycling of Secondary Materials Between Industries
IV. State Authority
V. 60–Day Effective Date
VI. Regulatory Requirements
A. Executive Order No. 12866
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
D. Unfunded Mandates Reform Act

I. Authority

These regulations are issued under the authority of Sections 2002 and 3001 et seq. of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6912 and 6921 et seq.

II. Background

In this document, EPA is correcting a significant error in the text of a regulatory exclusion relating to recycling of recovered oil—oil that has been recovered from secondary materials such as wastewater generated from normal petroleum exploration, refining, and transport activities—back into the petroleum refining process. Although the genesis of this error requires some detailed explanation (which appears below), the ultimate resolution is straightforward: the Agency intended to exclude from the definition of solid waste, and RCRA Subtitle C authority, recovered oil that is inserted into a petroleum refining process at a point at which the process removes or will remove at least some contaminants. Today's document corrects the erroneous regulatory text to restore this intended result.

The rule at issue is an exclusion for recovered oil found at 40 CFR 261.4(a)(12) (promulgated at 59 FR 38545 (July 28, 1994)). That rule excludes recovered oil from the definition of solid waste, and RCRA Subtitle C authority, provided the recovered oil is reinserted into a petroleum refining process ''prior to crude distillation or catalytic cracking.'' 40 CFR 261.4(a)(12). The purpose of the exclusion is to exclude from RCRA regulation recovered oil which is used as a feedstock in the petroleum refining process. 59 FR at 38538. Conditioning the exclusion on insertion into the refining process at a point where the process removes contaminants from the recovered oil also helps assure the legitimacy and safety of the activity. 59 FR at 38542.

However, the rule's limitation on the point of reinsertion is, in fact, erroneously restrictive. The correct formulation is that reinsertion should be at, or before, any point in the petroleum refining process where at least some

contaminants are removed (i.e. separated from the matrix). Crude distillation and catalytic cracking are examples of such points but are not the exclusive locations where the refining process removes contaminants. See, e.g., 50 FR at 28725 (July 15, 1985).

The regulatory history of this rule, although tangled, indicates that the Agency did not intend to impose the limiting condition (insertion before crude distillation or catalytic cracking only) in fact promulgated, but rather to condition the exclusion on insertion into any part of the refining process that removes contaminants. Since November 1985, EPA has exempted certain fuels resulting from refining of materials derived from oil-containing petroleum industry hazardous wastes. See 50 FR 49169, 49203 (Nov. 29, 1985) (codifying 40 CFR 261.6(a)(viii)(B)). The accompanying preamble explained that these exemptions were based on the waste being inserted into a part of the petroleum refining process ''designed to remove contaminants in the normal operation of the refining process.'' 50 FR at 49169. The preamble further explained that the source of the test was a comparable statutory exemption from hazardous waste fuel labelling requirements for fuels produced from oil-bearing refining wastes that are inserted into the refining process at a point where ''contaminants are removed.'' 50 FR at 49169, referring to RCRA sections 3004(r)(2)(B), and (r)(3). As set out in the legislative history to those provisions, the underlying principle is that ''(r)efineries often take oily wastes and refining transportation wastes and reintroduce these wastes into the refining process where the oil component is incorporated into a product and contaminants are removed. Refineries should not automatically have to place a warning label on these fuels.'' S. Rep. No. 98–284, 98th Cong. 1st Sess. at 40.

The 1994 rule at issue here meant to retain this principle by requiring that the recovered oil be inserted into the refining process ''at or before a point * * * designed to remove toxic metal and organic contaminants * * *.'' 59 FR at 38542 (July 28, 1994). The preamble then incorrectly stated that this means that insertion had to be ''prior to crude distillation or catalytic cracking.'' *Id.* As noted above, this is factually incorrect. The refining process removes contaminants at a number of points after distillation and catalytic cracking, an example being in fractionation units located downstream of catalytic crackers. See letter from Ralph Colleli, Esq. to Ross Elliott, April 5, 1995; letter from Ralph Colleli, Esq. to Mr. Michael Shapiro, June 20, 1995.

The 1994 regulatory text is consequently factually wrong, and inappropriately reduces recycling opportunities for recovered oil without corresponding environmental benefit. For these reasons, EPA is correcting the text of the exclusion by revising the first sentence to state that insertion of recovered oil must be into the refining process ''at or before a point where contaminants are removed.''

There is also one further *caveat* about the regulatory language. EPA did not extend the scope of the exclusion to include situations where recovered oil is inserted into a petroleum coker. 59 FR at 38542. Instead, EPA deferred making a final decision on that issue until a later rulemaking. 59 FR at 38536, 38541, 38542. In fact, EPA has recently proposed that petroleum coking operations be expressly encompassed within the scope of an expanded exclusion. 60 FR 57747, 57796 (Nov. 20, 1995). EPA will take final action on that proposal as part of that separate rulemaking proceeding.

However, because a final decision on the status of petroleum cokers is being made in that other rulemaking, and because petroleum cokers do remove contaminants from incoming materials, at this time EPA is adding to the amended regulatory text the qualification that insertion be into or before a part of the process where contaminants are removed, but not direct insertion to petroleum cokers. In addition, EPA wishes to clarify that neither the July 28, 1994 rule nor this document is intended to change the current regulatory status of petroleum cokers.

III. Clarification of Issues Discussed in the Preamble

In addition to the correction discussed above, EPA wishes to clarify several issues discussed in the preamble to the July 28, 1994 recovered oil rule.

A. Status of Recovered Oil From Refineries With Synthetic Organic Chemical Manufacturing Industry (SOCMI) Units

The recovered oil rule, as corrected by today's document, provides an exclusion from RCRA regulation for oil that is recovered from ''normal'' petroleum refinery operations and inserted prior to points in the petroleum refining process, other than direct insertion into a coker, where contaminant removal occurs (§ 261.4(a)(12)). Under this provision, oil recovered from a petroleum refinery's wastewater treatment system is excluded from RCRA regulation if it is inserted into designated refinery process points. Since promulgation of the recovered oil rule, EPA has learned that a number of petroleum refineries also operate petrochemical processing units on-site and that wastewater from these units is discharged into the refinery's wastewater treatment system. The wastewater from these units represents 2%–12% of the total refinery wastewater volumes and rarely contains recoverable oil according to some petroleum industry sources. In response to questions from the regulated community regarding whether the recovered oil exclusion applies to oil recovered from petroleum refineries with SOCMI units on-site, EPA provides the following clarification.

While EPA did not specifically address this situation in the recovered oil rule, the Agency intended that the exclusion apply to refineries with on-site petrochemical processing units. EPA views these SOCMI units as part of the normal petroleum refining operation. Therefore, the presence of these units at a petroleum refining facility does not preclude the refinery's eligibility for the recovered oil exclusion.

B. Status of Recovered Oil From Co-Located Petroleum Refineries and Petrochemical Facilities

The recovered oil rule also failed to specifically address how the regulations apply in cases where co-located petroleum refineries and petrochemical facilities share the same wastewater treatment system. In these situations, the proximally located facilities are generally owned and operated by the same parent company. However, the facilities may be separately owned and operated in some instances. This situation presents essentially the same issue as that posed by the previous case involving on-site SOCMI units. The difference in this case is that the petrochemical processes are located off-site of the petroleum refining facility. In response to questions from the regulated community regarding whether the recovered oil exclusion applies to oil recovered from wastewater treatment systems that service both petrochemical and petroleum refining operations, EPA provides the following clarification.

The Agency's intent in crafting the recovered oil exclusion was to limit its applicability to oil recovered from petroleum industry sources for reasons explained in the preamble to the recovered oil rule. 51 FR 38539. Accordingly, the exclusion specifically does not apply to oil generated from non-petroleum industry operations. The

exclusion does, however, apply broadly to recovered oil generated from both on- and off-site sources within the petroleum industry (e.g., the exclusion applies to recovered oil from petroleum exploration and production activities). It is EPA's position that, in cases where petrochemical and petroleum refining operations are co-located and share a common wastewater treatment system, the petrochemical operations are appropriately considered part of normal petroleum refining for purposes of the recovered oil exclusion. In these situations, given the common wastewater treatment system and the predominance of petroleum refining wastewater, the integration between the two facilities is such that the petrochemical facility falls within scope of the exclusion. The recovered oil exclusion therefore applies to oil recovered from a wastewater treatment system that a refinery shares with a co-located petrochemical facility. The exclusion does not, however, apply to recovered oil from a petrochemical facility that is sent to a petroleum refinery for recycling via any route other than a shared wastewater treatment system (e.g., via truck, rail, etc). However, in a separate document published in the Federal Register on November 20, 1995 (60 FR 57747), EPA is proposing to expand the exclusion to cover recovered oil that is sent from petrochemical facilities to co-located or commonly owned refineries for recycling by other means of transport.

C. Recycling of Secondary Materials Between Industries

With the above exceptions, the recovered oil exclusion does not extend to recovered oil from non-petroleum industries. As explained in the preamble to the July 28, 1994 rule, ''such an extension is beyond the scope of the recovered oil rule. It is also beyond the scope of judicial decisions construing the definition of solid waste'' which indicated that, ''when one industry sends its residual materials to another industry for recycling, the initial industry *can* be considered to have discarded them.'' (emphasis added) 59 FR 38,539, July 28, 1994. EPA wishes to clarify that this preamble discussion was not intended to modify in any way the pre-existing state of law regarding EPA's regulatory jurisdiction over recycling. More specifically, EPA wishes to make clear that this discussion was not meant to imply that all secondary materials that are sent off-site for recycling must be considered to be discarded materials in all situations. Rather, the intent of this discussion was merely to: (1) explain the court's and EPA's position that recycling of secondary materials (on- or off-site) *may* involve an element of discard and *may* therefore be subject to regulation under RCRA subtitle C; and (2) make clear that the scope of the recovered oil rule is limited to determining the Agency's jurisdiction only over recycling that occurs within the petroleum refining industry.

IV. State Authority

Under Section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under Sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR Part 271.

Today's amendments are not imposed pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA). The rule changes, therefore, will become effective immediately only in those States without interim or final authorization, not in authorized States. The effect of the rule changes on authorized State programs is discussed next.

Today's direct final rule eliminates a factual error, an error that inappropriately restricts the location in the refining process at which recovered oil can be inserted for the legitimate recycling of the recovered oil. Therefore, today's rule restores the Agency's intended result to exclude from the definition of solid waste, and RCRA Subtitle C authority, recovered oil that is inserted into a petroleum refining process at a point at which the process removes or will remove at least some contaminants. The effect of today's direct final rule is therefore considered to be less stringent than the existing federal standards. Authorized States are only required to modify their programs when EPA promulgates federal regulations that are more stringent or broader in scope than the existing federal regulations. Therefore, States that are authorized for the July 28, 1994 rule are not required to modify their programs to adopt today's rule. However, EPA strongly urges States to do so. EPA's authorization guidance to States will link the July 28, 1994 rule and today's final amendments.

Given the minor scope of today's amendment, those States that are authorized for the July 28, 1994 rule may submit an abbreviated authorization revision application to the Region for today's amendment. This application should consist of a letter from the State to the appropriate Regional office, certifying that it has adopted provisions equivalent to and no less stringent than today's final rule (see the December 19, 1994, memorandum from Michael Shapiro, Director of the Office of Solid Waste, to the EPA Regional Division Directors that is in the docket for today's rule). The State should also submit a copy of its final rule or other authorizing authority. Revisions to the revised Program Description, Memorandum of Agreement, and Attorney General's statement are not necessary (see 40 CFR 271.21(b)(1)). EPA expects that this simplified process will expedite the review of the authorization submittal for this rule.

V. 60–Day Effective Date

Because the regulatory community does not need 6 months to come into compliance with this rule, EPA finds, pursuant to RCRA section 3010(b)(1), that this rule can be made effective in less than six months.

VI. Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

(1) have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this amendment to the final rule is not a ''significant regulatory action'' under the terms of the Executive Order and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–602, requires that Federal agencies examine the impacts of their regulations on ''small entities''. If a

rulemaking will have a significant impact on a substantial number of small entities, agencies must consider regulatory alternatives that minimize economic impact.

EPA believes that this amendment will have negligible impact on any small entity because it expands the terms of an exclusion from regulation. In addition, the underlying rule itself was deregulatory and so did not have significant adverse economic impact on small entities. See 59 FR 38545. Therefore, the Administrator certifies pursuant to 5 U.S.C. 601 *et seq.*, that this rule will not have a significant impact on a substantial number of small entities because this amendment reduces the scope of the RCRA subtitle C regulatory program.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., EPA must consider the paperwork burden imposed by any information collection request in a proposed or final rule. This rule will not impose any new information collection requirements.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When a written statement is needed for an EPA rule, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector because it imposes no enforceable duties on any of these governmental entities or the private sector. The rule merely corrects a factual error in the regulatory text of the regulatory definition of solid waste. In any event, EPA has determined that this rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. Similarly, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Solid waste, Petroleum, Recycling.

Dated: March 19, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912 (a), 6921, 6922 and 6938.

2. Section 261.4 is amended by revising paragraph (a)(12) to read as follows:

§ 261.4 Exclusions.

(a) * * *

(12) Recovered oil from petroleum refining, exploration and production, and from transportation incident thereto, which is to be inserted into the petroleum refining process (SIC Code 2911) at or before a point (other than direct insertion into a coker) where contaminants are removed. This exclusion applies to recovered oil stored or transported prior to insertion, except that the oil must not be stored in a manner involving placement on the land, and must not be accumulated speculatively, before being so recycled. Recovered oil is oil that has been reclaimed from secondary materials (such as wastewater) generated from normal petroleum refining, exploration and production, and transportation practices. Recovered oil includes oil that is recovered from refinery wastewater collection and treatment systems, oil recovered from oil and gas drilling operations, and oil recovered from wastes removed from crude oil storage tanks. Recovered oil does not include (among other things) oil-bearing hazardous waste listed in 40 CFR part 261 D (e.g., K048–K052, F037, F038). However, oil recovered from such wastes may be considered recovered oil. Recovered oil also does not include used oil as defined in 40 CFR 279.1.

* * * * *

[FR Doc. 96–7275 Filed 3–25–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

Defense Federal Acquisition Regulation Supplement; Naval Vessel Components

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comment.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement additional statutory restrictions on the acquisition of anchor and mooring chain and totally enclosed lifeboats, when used as naval vessel components.

DATES: Effective date: April 1, 1996.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before May 28, 1996, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 96–D300 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0131

SUPPLEMENTARY INFORMATION:

A. Background

This interim DFARS rule implements Section 806, paragraph (a), of the Fiscal Year 1996 Defense Authorization Act (Pub. L. 104–106), amending the restriction on anchor and mooring chain at 225.7012 and the restriction on totally enclosed lifeboat survival systems at 225.7022. The interim rule also removes outdated restrictions relating to anchor and mooring chain for fiscal years 1988 through 1990, at DFARS 225.7012–2, 225.7012–3, 225.7012–4(b) and (c), 252.225–7020, and 252.225–7021.

B. Regulatory Flexibility Act

This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 602, *et seq.*, because the foreign source restrictions contained in the rule are not significantly different from existing foreign source restrictions. An Initial Regulatory Flexibility Analysis has therefore not been prepared. Comments from small entities concerning the affected DFARS subparts will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 96–d300 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply. This interim rule does not impose any new information collection requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. This action is necessary to promptly implement Section 806, paragraph (a), of the Fiscal Year 1996 Defense Authorization Act (Pub. L. 104–106). Comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 225 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

2. Sections 225.7012, 225.7012–1, 225.7012–2, and 225.7012–3 are revised to read as follows:

225.7012 Restrictions on anchor and mooring chain.

225.7012–1 Restrictions.

(a) Under Public Law 101–511, Section 8041, and similar sections in subsequent Defense appropriations acts, DoD appropriations for fiscal years 1991 and after may not be used to acquire welded shipboard anchor and mooring chain, four inches in diameter and under, unless—

(1) It is manufactured in the United States, including cutting, heat treating, quality control, testing, and welding (both forging and shot blasting process); and

(2) The cost of the components manufactured in the United States exceeds 50 percent of the total cost of components.

(b) Acquisition of welded shipboard anchor and mooring chain, four inches in diameter and under, when used as a component of a naval vessel, is also restricted under 10 U.S.C. 2534(a)(3)(ii). However, the more stringent restriction under 225.7012–1(a) takes precedence.

225.7012–2 Waiver.

The restriction in 225.7012–1(a) may be waived by the Secretary of the Department responsible for acquisition, on a case-by-case basis, where sufficient domestic suppliers are not available to meet DoD requirements on a timely basis and the acquisition is necessary to acquire capability for national security purposes.

(a) Document the waive in a written D&F containing—

(1) The factors supporting the waiver; and

(2) A certification that the acquisition must be made in order to acquire capability for national security purposes.

(b) Provide a copy of the D&F to the House and Senate Committees on Appropriations.

225.7012–3 Contract clauses.

Use the clause at 252.225–7019, Restriction on Acquisition of Foreign Anchor and Mooring Chain, in all solicitations and contracts—

(1) Using fiscal year 1991 or later funds; and

(2) Requiring welded shipboard anchor or mooring chain of four inches in diameter or less.

225.7012–4 [Removed]

3. Section 225.7012–4 is removed.

4. Sections 225.7022, 225.7002–1, and 225.7022–2 are revised to read as follows:

225.7002 Restrictions on totally enclosed lifeboat survival systems.

225.7022–1 Restrictions.

(a) In accordance with Section 8124 of the Fiscal Year 1994 Defense Appropriations Act (Public Law 103–139) and Section 8093 of the Fiscal Year 1995 Defense Appropriations Act (Public Law 103–335), do not purchase a totally enclosed lifeboat survival system, which consists of the lifeboat and associated davits and winches, unless 50 percent or more of the components are manufactured in the United States, and 50 percent or more of the labor in the final manufacture and assembly of the entire system is performed in the United States.

(b) In accordance with 10 U.S.C. 2534(a)(3)(B), do not purchase a totally enclosed lifeboat which is a component of a naval vessel, unless it is manufactured in the United States or Canada. In accordance with 10 U.S.C. 2534(h), this restriction may not be implemented through the use of a contract clause or certification. Implementation shall be effected through management and oversight techniques that achieve the objective of the restriction without imposing a significant management burden on the Government or the contractor involved.

225.7022–2 Exceptions.

The restriction in 225.7022–1(b) does not apply if—

(a) The acquisition is at or below the simplified acquisition threshold; or

(b) Spare or repair parts are needed to support totally enclosed lifeboats manufactured outside the United States or Canada.

5. Sections 225.7022–3 and 225.7022–4 are added to read as follows:

225.7022–3 Waiver.

The waiver criteria at 225.7004–4 apply only to the restriction of 225.7022–1(b).

225.7022–4 Contract clause.

Use the clause at 252.225–7039, Restriction on Acquisition of Totally Enclosed Lifeboat Survival Systems, in all solicitations and contracts which require delivery of totally enclosed lifeboat survival systems.

PART 252—SOLICITATION PROVISIONS AND CONTRACTS CLAUSES

252.225–7019 [Amended]

6. Section 252.225–7019 is amended in the introductory text by revising the citation ''225.7012–4(a)'' to read ''225.7012–3''.

225.225–7020 and 252.7021 [Removed and reserved]

7. Sections 252.225–7020 and 252.225–7021 are removed and reserved.

8. Section 252.225–7039 is amended by revising the introductory text, the clause date, and the introductory text of the clause to read as follows:

252.225–7039 Restriction on acquisition of Totally Enclosed Lifeboat Survival Systems.

As prescribed in 225.7022–4, use the following clause:

RESTRICTION ON ACQUISITION OF TOTALLY ENCLOSED LIFEBOAT SURVIVAL SYSTEMS (APR 1996)

For totally enclosed lifeboat survival systems furnished under this contract, which consist of lifeboat and associated davits and winches, the Contractor agrees that—

* * * * *

[FR Doc. 96–7218 Filed 3–25–96; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–14; Notice 98]

RIN 2127–AF30

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final Rule, correcting amendment.

SUMMARY: On May 23, 1995, NHTSA published a final rule allowing manufacturers the option of installing a manual device that motorists could use to deactivate the front passenger-side air bag in vehicles in which infant restraints can be used in the front seat only. As part of this final rule, NHTSA amended the air bag warning label required on vehicle sun visors. The amendments were effective June 22, 1995. Due to an error, the regulatory language of the final rule deleted an option to use the signal word ''Warning'' in place of the word ''Caution'' on the sun visor label. This notice corrects that error.

DATES: Effective Date: The amendments made in this rule are effective March 26, 1966.

Petition Date: Any petitions for reconsideration must be received by NHTSA no later than April 25, 1996.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Versailles, Office of the Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone (202) 366–2992; facsimile (202) 366–3820; electronic mail ''mversailles@nhtsa.dot.gov''.

SUPPLEMENTARY INFORMATION: On May 23, 1995, NHTSA published a final rule amending 49 CFR 571.208 to allow manufacturers the option of installing a manual device that motorists could use to deactivate the front passenger-side air bag in vehicles in which infant restraints can be used in the front seat only. As part of this final rule, NHTSA amended the air bag warning label required on vehicle sun visors to specify that the caution against installing a rear-facing infant seat in a front seating position did not apply if the air bag were off. The amendments were effective June 22, 1995. Due to an error, the regulatory language of the final rule deleted language incorporating the provision in S5.4.1(b)(1) that permits the use of the signal word ''Warning,'' in place of the word ''Caution,'' on the sun visor label. This notice corrects that error.

NHTSA finds for good cause that this final rule can be made effective immediately. The stated purpose of the May 23, 1995, final rule was to affect only the cautionary statement concerning placement of a rear-facing infant seat in a front seating position, and not any other part of the label. This notice corrects an error which resulted in the unintentional amending of the options for the choice of the signal word to be used at the beginning of the label.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' This document is part of an action that was determined to be not ''significant'' under the Department of Transportation's regulatory policies and procedures. This notice does not impose any new requirements on manufacturers. It simply corrects an error.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this final rule under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Further, this final rule will not alter the economic impacts of the May 1995 final rule. As explained above, this rule will not have an economic impact on any manufacturers.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (P.L. 96–511), there are no requirements for information collection associated with this final rule.

National Environmental Policy Act

NHTSA has also analyzed this final rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This final rule does 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.

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.208 is amended by revising section S4.5.1(b)(1) to read as follows:

§ 571.208 Standard No. 208, Occupant Crash Protection

* * * * *

S4.5.1 *Labeling and owner's manual information.*

* * * * *

(b) *Label on sun visor above front outboard seating positions equipped with inflatable restraint.*

(1) Each vehicle manufactured on or after September 1, 1994, shall comply with either S4.5.1(b)(1)(i) or S4.5.1(b)(1)(ii), except that the word ''WARNING'' may be used instead of ''CAUTION''.

(i) Each front outboard seating position that provides an inflatable restraint shall have a label permanently affixed to the sun visor for such seating position on either side of the sun visor, at the manufacturer's option. Except as provided in S5.4.1(b)(1) and S4.5.1(b)(3), this label shall read:

CAUTION

TO AVOID SERIOUS INJURY:

For maximum safety protection in all types of crashes, you must always wear your safety belt.

Do not install rearward-facing child seats in any front passenger seat position.

Do not sit or lean unnecessarily close to the air bag.

Do not place any objects over the air bag or between the air bag and yourself.

See the owner's manual for further information and explanations.

(ii) If the vehicle is equipped with a cutoff device permitted by S4.5.4 of this standard, each front outboard seating position that provides an inflatable restraint shall have a label permanently affixed to the sun visor for such seating position on either side of the sun visor, at the manufacturer's option. Except as provided in S5.4.1(b)(1), this label shall read:

CAUTION

TO AVOID SERIOUS INJURY:

For maximum safety protection in all types of crashes, you must always wear your safety belt.

Do not install rearward-facing child seats in any front passenger seat position, unless the air bag is off.

Do not sit or lean unnecessarily close to the air bag.

Do not place any objects over the air bag or between the air bag and yourself.

See the owner's manual for further information and explanations.

* * * * *

Issued on: March 18, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–6965 Filed 3–25–96; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 960129019–6019–01; I.D. 032096A]

Groundfish of the Bering Sea and Aleutian Islands Area; Yellowfin Sole by Vessels Using Trawl Gear in Bycatch Limitation Zone 1

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for yellowfin sole by vessels using trawl gear in Bycatch Limitation Zone 1 (Zone 1) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the first seasonal apportionment of the prohibited species catch (PSC) allowance of *C. bairdi* Tanner crab apportioned to the trawl yellowfin sole fishery category in Zone 1.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), March 20, 1996, until 12 noon, A.l.t., April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (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 675.

The 1996 PSC allowance of *C. bairdi* Tanner crab in Zone 1 for the trawl yellowfin sole fishery category, which is defined at § 675.21(b)(1)(iii)(B)(1), was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4311, February 5, 1996) as 250,000 crab. The first seasonal bycatch apportionment of that allowance is 50,000 crab.

The Director, Alaska Region, NMFS, has determined, in accordance with § 675.21(c)(1)(i), that the first seasonal apportionment of the PSC allowance of *C. bairdi* Tanner crab for the trawl yellowfin sole fishery in Zone 1 has been reached. Therefore, NMFS is prohibiting directed fishing for yellowfin sole by vessels using trawl gear in Zone 1 of the BSAI.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.21 and is exempt from review under E.O. 12866.

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

Dated: March 20, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–7182 Filed 3–20–96; 3:57 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 59
Tuesday, March 26, 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–ANE–64]

Airworthiness Directives; CFM International CFM56–5C Series Turbofan Engines

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 CFM International (CFMI) CFM56–5C2/G, –5C3/G, and –5C4 series turbofan engines. This proposal would require a reduction of the low cycle fatigue (LCF) retirement lives for certain high pressure turbine rotor (HPTR) front shafts, HPTR front air seals, HPTR disks, booster spools, and low pressure turbine rotor (LPTR) stage 3 disks. This proposal is prompted by the results of a refined life analysis performed by the manufacturer which revealed minimum calculated LCF lives lower than published LCF retirement lives. The actions specified by the proposed AD are intended to prevent an LCF failure of the HPTR front shaft, HPTR front air seal, HPTR disk, booster spool, and LPTR stage 3 disk, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Comments must be received by May 28, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95– ANE–64, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert J. Ganley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7138, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report 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–ANE–64.'' 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, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–64, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

This proposed airworthiness directive (AD) is applicable to CFM International (CFMI) CFM56–5C2/G, –5C3/G, and –5C4 series turbofan engines. The manufacturer performed a study using updated lifing analyses that revealed certain high pressure turbine rotor (HPTR) front shafts, HPTR front air seals, HPTR disks, booster spools, and low pressure turbine rotor (LPTR) stage 3 disks have minimum calculated low cycle fatigue (LCF) lives which are lower than published LCF retirement lives. These reduced LCF lives are due to changes in component operating environments, which are associated with the incorporation of the takeoff mach bump in the analysis. This condition, if not corrected, could result in an LCF failure of the HPTR front shaft, HPTR front air seal, HPTR disk, booster spool, and LPTR stage 3 disk, which could result in an uncontained engine failure and damage to the aircraft..

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 a reduction of the LCF retirement lives for certain HPTR front shafts, HPTR front air seals, HPTR disks, booster spools, and LPTR stage 3 disks.

There are approximately 10 engines of the affected design in the worldwide fleet. The manufacturer has advised the FAA that there are no engines installed on U.S. registered aircraft that would be affected by this AD. Therefore, there is no associated cost impact on U.S. operators as a result of this AD. However, should an affected engine be imported on an aircraft and placed on the U.S. registry in the future, it would not take any additional work hours per engine to accomplish the proposed actions. Assuming that the parts cost is proportional to the reduction of the LCF retirement lives, the required parts would cost approximately $25,736 per engine. Based on these figures, the total cost impact of the AD is estimated to be $25,736 per engine.

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:

CFM International: Docket No. 95–ANE–64.

Applicability: CFM International (CFMI) CFM56–5C2/G, –5C3/G, and –5C4 series turbofan engines, installed on but not limited to Airbus A340 series aircraft.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent a low cycle fatigue (LCF) failure of the high pressure turbine rotor (HPTR) front shaft, HPTR front air seal, HPTR disk, booster spool, and low pressure turbine rotor (LPTR) stage 3 disk, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) Remove from service HPTR front shafts, Part Numbers (P/N's) 1498M40P03, 1498M40P05, and 1498M40P06, prior to accumulating 8,400 cycles since new (CSN), and replace with a serviceable part.

(b) Remove from service HPTR front air seals, P/N's 1523M34P02 and 1523M34P03, prior to accumulating 4,000 CSN, and replace with a serviceable part.

(c) Remove from service HPTR disks, P/N 1498M43P04, prior to accumulating 6,200 CSN, and replace with a serviceable part.

(d) Remove from service booster spools, P/N 337–005–210–0, prior to accumulating 13,800 CSN, and replace with a serviceable part.

(e) Remove from service LPTR stage 3 disks, P/N's 337–001–602–0 and 337–001–605–0, prior to accumulating 8,630 CSN, and replace with a serviceable part.

(f) This action establishes the new LCF retirement lives stated in paragraphs (a) through (e) of this AD, which are published in Chapter 05 of the CFM56 Engine Shop Manual, CFMI–TP.SM.8.

(g) For the purpose of this AD, a ''serviceable part'' is one that has not exceeded its respective new life limit as set out in this AD.

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

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

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

Issued in Burlington, Massachusetts, on March 12, 1996.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–7243 Filed 3–25–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 95–ANE–01]

Airworthiness Directives; AlliedSignal, Inc. AL5512 Series Turboshaft Engines

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 AlliedSignal, Inc. (formerly Textron Lycoming) AL5512 series turboshaft engines. This proposal would require a one-time eddy current inspection of the second stage turbine disk, reduced service lives for the second, third, and fourth stage turbine disks, reduced service lives for the first and third through seventh stage compressor rotor disks, and a reduced service life for the gas producer turbine spacer. This proposal would also require a new, more conservative minor cycle counting factors table for repetitive heavy lift operations, and provides a method for prorating past utilization for all gas producer and compressor components based on the new cycle counting factors. For those components that exceed their new published life limits, this proposal would implement a drawdown for safe removal of time-expired components. This proposal is prompted by reports of cracks in certain AlliedSignal, Inc. ALF502R series turbofan engine disks, which are identical in design and construction to those within the AlliedSignal, Inc. AL5512 series turboshaft engines. The actions specified by the proposed AD are intended to prevent disk failure, which could result in an uncontained engine failure, inflight shutdown, or possible damage to the rotorcraft.

DATES: Comments must be received by May 28, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–01, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AlliedSignal, Inc., 550 Main St., Stratford, CT 06497–7593. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Daniel Kerman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA

01803–5299; telephone (617) 238–7130, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report 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–ANE–01.'' 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, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–01, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has received reports of cracks found in certain disks returned from service to the manufacturer and in certain factory tested disks installed on AlliedSignal, Inc. (formerly Textron Lycoming) ALF502R series turbofan engines. While no cracks have been found in AlliedSignal, Inc. AL5512 series turboshaft engine components, certain disks are identical in design and construction to those utilized in the ALF502R engine. The cracks in the ALF502R engines have been found in the bolt hole area of several second stage turbine disks. Cracks have also been discovered in the rim dovetail area of several first and third through seventh stage compressor rotor disks in the ALF502R engines. Subsequent analysis and testing of the current design of first and third through seventh stage compressor rotor disks; second, third, and fourth stage turbine disks; and the gas producer spacer have revealed a lower fatigue life than originally calculated. In addition, the FAA has determined the need to require a special, one-time eddy current inspection of the second stage turbine disk to discover possible bolt hole cracking. This condition, if not corrected, could result in disk failure, which could result in an uncontained engine failure, inflight shutdown, or possible damage to the rotorcraft.

The FAA has reviewed and approved the technical contents of Textron Lycoming Service Bulletin (SB) No. AL5512–0002, Revision 5, dated December 16, 1993, that describes reduced service lives for first and third through seventh stage compressor rotor disks; second, third, and fourth stage turbine disks; and the gas producer spacer. In addition this SB describes factors to be used for cyclic computation of components utilized in repetitive heavy lift (RHL) operation, and provides a method for prorating past component utilization based on the new cycle counting factors.

The FAA has also reviewed and approved the technical contents of the following SB's: Textron Lycoming SB No. AL5512–0041, dated December 16, 1993, and Textron Lycoming SB No. AL5512–0046, dated April 4, 1994. These SB's describe drawdown schedules for those components that exceed their new life limits.

In addition, the FAA has reviewed and approved the technical contents of Textron Lycoming SB No. AL5512–0042, dated December 16, 1993, that describes procedures for a one-time eddy current inspection of the second stage turbine disk bolt holes.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, the proposed AD would require a one-time eddy current inspection of the second stage turbine disk, reduced service lives for the second, third, and fourth stage turbine disks, reduced service lives for the first and third through seventh stage compressor rotor disks, and a reduced service life for the gas producer turbine spacer. This proposal would also require a new, more conservative minor cycle counting factors table for RHL operation and provides a method for prorating past utilization for all gas producer and compressor components based on the new cycle counting factors. For those components that exceed their new published life limits, this proposal would implement a drawdown for safe removal of time-expired components. The actions would be required to be accomplished in accordance with the service bulletins described previously.

There are approximately 33 engines of the affected design in the worldwide fleet. The FAA estimates that 20 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 60 work hours per engine to disassemble, assemble, and test each engine, that each engine would consume $2,000 per engine of fuel and disposable hardware, and that the average labor rate is $60 per work hour. The prorated life-expired components replacement cost would be approximately $74,530 per engine. Based on these figures, the cost impact of performing the actions described in Textron Lycoming SB No. AL5512–0002, Revision 5, dated December 16, 1993, is estimated to be $1,602,600.

In addition, the FAA also estimates that it would take approximately 16 work hours to perform a one-time eddy current inspection of the second stage turbine disk. The cost impact of performing the actions described in Textron Lycoming SB No. AL5512–0042, dated December 16, 1993, is estimated to be $19,200. Therefore, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,621,800.

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:

AlliedSignal, Inc.: Docket No. 95–ANE–01.

Applicability: AlliedSignal, Inc. (formerly Textron Lycoming) AL5512 series turboshaft engines, installed on but not limited to Boeing Helicopter Model 234 rotorcraft.

Note: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (g) 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 engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent disk failure, which could result in an uncontained engine failure, inflight shutdown, or possible damage to the rotorcraft, accomplish the following:

(a) Within 30 days after the effective date of this airworthiness directive (AD), conduct a revised operating cycle count (prorate) of all gas producer and compressor components in accordance with paragraph 2.D of Textron Lycoming Service Bulletin (SB) No. AL5512–0002, Revision 5, dated December 16, 1993.

(b) After the effective date of this AD, utilize the new, more conservative minor cycle counting methodology for repetitive heavy lift operation described in Textron Lycoming SB No. AL5512–0002, Revision 5, dated December 16, 1993

(c) Following implementation of the revised operating cycle count methodology (prorate) specified in paragraph (a) of this AD, replace those components that exceed their new life limits in accordance with the component removal schedules defined in Textron Lycoming SB No. AL5512–0041, dated December 16, 1993, and SB No. AL5512–0046, dated April 4, 1994, as applicable. Replacement components must have cyclic accumulation no greater than the reduced life limits as defined in Textron Lycoming SB AL5512–0002, Revision 5, dated December 16, 1993.

(d) Following implementation of the revised operating cycle count methodology (prorate) specified in paragraph (a) of this AD, installation of those components that exceed their life limit on the effective date of this AD is prohibited.

(e) Perform a one-time eddy current inspection of installed second stage turbine rotor disk, part number 2–121–058–18, bolt holes at the next shop visit that the disk assembly is removed from the engine or module after the effective date of this AD and after the part has accrued a minimum of 5,000 cycles in service, in accordance with the Accomplishment Instructions of Textron Lycoming SB No. AL5512–0042, dated December 16, 1993. Prior to further flight, remove from service disks that do not meet the return to service limits defined in the SB, and replace with serviceable parts.

(f) Prior to installation, but after accruing a minimum of 5,000 cycles in service, perform a one-time eddy current inspection of uninstalled second stage turbine rotor disk, part number 2–121–058–18, bolt holes in accordance with the Accomplishment Instructions of Textron Lycoming SB No. AL5512–0042, dated December 16, 1993. Installation of disks that do not meet the return to service limits defined in the SB is prohibited.

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

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

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

Issued in Burlington, Massachusetts, on March 11, 1996.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–7244 Filed 3–25–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 95–ANE–68]

Airworthiness Directives; AlliedSignal, Inc. TSCP700–4B, –4E, and –5 Auxiliary Power Units

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 AlliedSignal, Inc. (formerly Garrett) Models TSCP700–4B, –4E, and –5 auxiliary power units (APU's). This proposal would require removal from service of certain high pressure turbine (HPT) disks identified by serial number, and replacement with serviceable parts. This proposal is prompted by the discovery of a material defect in certain HPT disk forgings that may result in HPT disk rupture prior to reaching the disk cyclic life limit. The actions specified by the proposed AD are intended to prevent an HPT disk rupture.

DATES: Comments must be received by May 28, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–68, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AlliedSignal Engines, P.O. Box 52181, Phoenix, AZ 85072–2181; telephone (800) 338–3378, fax (602) 231–4402. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (310) 627–5245; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications

should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report 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–ANE–68.'' 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, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–68, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) received a report from the manufacturer that a material defect exists in certain forgings of high pressure turbine (HPT) disks installed on AlliedSignal, Inc. (formerly Garrett) Models TSCP700–4B, –4E, and –5 auxiliary power units (APU's). Analysis indicates that HPT disks forged from this material may rupture prior to reaching the disk cyclic life limit of 30,000 cycles since new (CSN). This condition, if not corrected, could result in an HPT disk rupture.

The FAA has reviewed and approved the technical contents of AlliedSignal Aerospace Service Bulletin (SB) No. TSCP700–49–A7168, dated November 7, 1995, that identifies by serial number HPT disks that may have been forged with a material defect.

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 removal from service of certain HPT disks identified by serial number, and replacement with serviceable parts, prior to accumulating 7,500 CSN, or 3 years after the effective date of this AD, whichever occurs first. The FAA determined this calendar end-date based upon the effect of the material defect on the HPT disks' cyclic life. In addition, the FAA considered the rate of cyclic accumulation on disks in service. The actions would be required to be accomplished in accordance with the SB described previously.

There are approximately 31 APU's of the affected design in the worldwide fleet. The FAA estimates that 20 APU's installed on aircraft of U.S. registry would be affected by this proposed AD, and that no additional work hours would be required if the disk is replaced during overhaul. The manufacturer has advised the FAA that they will supply required parts at no charge to the operator. The FAA has therefore determined that this AD would impose no additional cost on U.S. operators.

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:

AlliedSignal, Inc.: Docket No. 95–ANE–68.

Applicability: AlliedSignal, Inc. (formerly Garrett) Models TSCP700–4B, –4E, and –5 auxiliary power units (APU's), with high pressure turbine (HPT) disks identified by serial number in AlliedSignal Aerospace Service Bulletin (SB) No. TSCP700–49–A7168, dated November 7, 1995. These APU's are installed on, but not limited to, McDonnell Douglas DC–10, KC–10 (military), and MD–11 series, and Airbus A300 series aircraft.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent an HPT disk rupture, accomplish the following:

(a) Prior to accumulating 7,500 cycles since new (CSN), or 3 years after the effective date of this AD, whichever occurs first, remove from service affected HPT disks and replace with a serviceable part.

(b) The definition of a disk cycle may be found in the applicable AlliedSignal, Inc. APU Component Maintenance Manual.

(c) Auxiliary Power Unit maintenance records may be used to determine if the HPT disk installed in the APU has a serial number listed in AlliedSignal Aerospace SB No. TSCP700–49–A7168, dated November 7, 1995.

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

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

Issued in Burlington, Massachusetts, on March 12, 1996.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–7245 Filed 3–25–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 96–ACE–02]

Proposed Amendment to Class E Airspace; Kaiser, MO, Camdenton, MO, Sedalia, MO, West Plains, MO, Point Lookout, MO, St. Charles, MO, Monett, MO, Butler, MO, Monroe City, MO, Farmington, MO, Fort Leavenworth, Sherman Army Airfield, KS, and Dodge City, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Kaiser, Lee C. Fine Memorial Airport, MO, Camdenton Memorial Airport, Camdenton, MO, Sedalia Memorial Airport, Sedalia, MO, West Plains Municipal Airport, West Plains, MO, M. Graham Clark Airport, Point Lookout, MO, St. Charles Co. Smartt Airport, St. Charles, MO, Monett Municipal Airport, Monett, MO, Butler Memorial Airport, Butler, MO, Monroe City Regional Airport, Monroe City, MO, Farmington Regional Airport, Farmington, MO, Fort Leavenworth, Sherman AAF, KS, and Dodge City Regional Airport, Dodge City, KS. The development of new Standard Instrument Approach Procedures (SIAP) based on the Global Positioning System (GPS) at the above locations has made the proposal necessary. The intended effect of this proposal is to provide additional controlled airspace for aircraft executing the SIAP at the above listed airports.

DATES: Comments must be received on or before May 1, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Operations Branch, ACE–530, Federal Aviation Administration, Docket No. 96–ACE–02, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Operations Branch, Air Traffic Division, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Air Traffic Operations Branch, ACE–530C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments as self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–ACE–02.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to provide additional controlled airspace for a new Instrument Flight Rules (IFR) procedure at the St. Charles Co. Smartt Airport, MO; Camdenton Memorial Airport, MO; Monett Municipal Airport, MO; West Plains Municipal Airport, MO; Butler Municipal Airport, MO; Point Lookout, M. Graham Clark Airport, MO; Sedalia Memorial Airport, MO; Monroe City Regional Airport, MO; Farmington Regional Airport, MO; Kaiser, Lee C. Fine Airport, MO; Fort Leavenworth, Sherman AAF, KS; and Dodge City Regional Airport, KS. The additional airspace would segregate aircraft operating under VFR conditions from aircraft operating under IFR procedures. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * *

ACE MO E5 Kaiser, MO

Kaiser, Lee E. Fine Memorial Airport, MO
(lat. 38°05′46″ N., long. 92°32′59″ W.)
Camdenton Memorial Airport, MO
(lat 37°58′29″ N., long. 92°41′30″ W.)
Osage Beach, Linn Creek-Grand Glaize Memorial Airport, MO
(lat 38°06′28″ N., long. 92°40′50″ W.)
Kaiser NDB
(lat. 38°05′48″ N., long. 92°33′11″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Lee C. Fine Memorial Airport and within 2.6 miles each side of the 045° bearing of the Kaiser NDB extending from the 6.5-mile radius of the Lee C. Fine Memorial Airport to 7.9 miles northeast of the airport and within a 6.3-mile radius of Camdenton Memorial Airport and within a 6.3-mile radius of Linn Creek-Grand Glaize Memorial Airport.

* * * * *

ACE MO E5 Sedalia, MO

Sedalia Memorial Airport, MO
(lat 38°42′25″ N., long. 93°10′34″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Sedalia Memorial Airport and within 2.6 miles each side of the 011° bearing from Sedalia Memorial Airport extending from the 6.7-mile radius to 7 miles north of the airport and within 2.6 miles each side of the 178° bearing from Sedalia Memorial Airport extending from the 6.7-mile radius to 7 miles south of the airport.

* * * * *

ACE MO E5 West Plains, MO

West Plains Municipal Airport, MO
(lat. 36°52′41″ N., long. 91°54′10″ W.)
Pomona NDB
(lat. 36°52′42″ N, long. 91°54′02″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of West Plain Municipal Airport and within 2.6 miles each side of the 185° bearing from the Pomona NDB extending from the 6.4-mile radius of the West Plains Municipal Airport to 7.4 miles south of the NDB.

* * * * *

ACE MO E5 Point Lookout, MO

Point Lookout, M. Graham Clark Airport, MO
(lat. 36°37′33″ N., long. 93°13′44″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of M. Graham Clark Airport and within 2.6 miles each side of the 123° bearing from the M. Graham Clark Airport extending from the 6.5-mile radius to 7 miles southeast of the airport.

* * * * *

ACE MO E5 St. Louis, MO

Lambert-St. Louis International Airport
(lat. 38° 44′51″ N., long. 90°21′36″ W.)
Spirit of St. Louis Airport, MO
(lat. 38°39′43″ N., long 90°39′00″ W.)
St. Louis Regional Airport, Alton, IL
(lat 38°53′25″ N., long. 90°02′45″ W.)
St. Charles County Smartt Airport, St. Charles, MO
(lat. 38°55′47″ N., long. 90°25′47″ W.)
St. Louis VORTAC
(lat. 38°51′38″ N., long. 90°28′57″ W.)
Foristell VORTAC
(lat. 38°41′40″ N., long. 90°58′17″ W.)
ZUMAY LOM
(lat. 38°47′17″ N., long. 90°16′44″ W.)
OBLIO LOM
(lat. 38°48′01″ N., long. 90°28′29″ W.)
Civic Memorial NDB
(lat. 38°53′32″ N., long. 90°03′23″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of the Lambert-St. Louis International Airport, and within 4 miles southeast and 7 miles northwest of the Lambert-St. Louis International Airport Runway 24 ILS localizer course extending from the airport to 10.5 miles northeast of the ZUMAY LOM, and within 4 miles southwest and 7.9 miles northeast of the Lambert-St. Louis Airport Runway 12R ILS localizer course extending from the airport to 10.5 miles northwest of the OBLIO LOM, and within 4 miles southwest and 7.9 miles northeast of the Lambert-St. Louis Airport Runway 30L ILS localizer southeast course extending from the airport to 8.7 miles southeast of the airport, and within a 6.6-mile radius of Spirit of St. Louis Airport and within 2.6 miles each side of the 098° radial of the Foristell VORTAC extending from the 6.6-mile radius area to 8.3 miles west of the airport, and within a 6.4-mile radius of St. Charles County Smartt Airport, and within a 6.7-mile radius of St. Louis Regional Airport, and within 4 miles each side of the 014° bearing from the Civic Memorial NDB extending from 6.7-mile radius to 7 miles north of the airport, and within 4.4 miles each side of the 190° radial of the St. Louis VORTAC extending from 2 miles south of the VORTAC to 22.1 miles south of the VORTAC.

* * * * *

ACE MO E5 Monett, MO

Monett Municipal Airport, MO
(lat. 36°54′39″ N., long. 94°00′46″ W.)
Neosho VORTAC
(lat. 36°50′33″ N., long. 94° 26′08″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Monett Municipal Airport and within 1.8 miles each side of the Neosho VORTAC 079° radial extending from the 6.5-mile radius to 7 miles west of the airport.

* * * * *

ACE MO E5 Butler, MO

Butler Memorial Airport, MO
(lat. 38°17′23″ N, long. 94°20′25″ W.)
Butler VORTAC
(lat 38°16″29″ N., long. 94°29′18″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Butler Memorial Airport and within 1.8 miles each side of the 082° radial of the Butler VORTAC extending from the 6.4-mile radius to the VORTAC.

* * * * *

ACE MO E5 Monroe City, MO

Monroe City Regional Airport, MO
(lat. 39°38′04″ N., long. 91°43′38″ W.)
Quincy VORTAC
(lat. 39°50′53″ N., long. 91°16′44″ W.)

That airspace extending upward from 700 feet above the surface within a 6.2-mile radius of Monroe City Regional Airport and within 3.5 miles each side of the Quincy VORTAC 239° radial extending from the 6.2-mile radius to 7 miles northeast of the airport.

* * * * *

ACE MO E5 Farmington, MO

Farmington Regional Airport, MO
(lat. 37°45′42″ N., long. 90°25′41″ W.)
Farmington VORTAC
(lat. 37°40′24″ N., long. 90°14′03″ W.)
Perrine NDB
(lat. 37°45′54″ N., long. 90°25′45″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Farmington Regional Airport and within 2.6 miles each side of the 034° bearing from the Perrine NDB extending from the 6.4 mile radius to 7.9 miles north of the airport, and within 2.6 miles each side of the 191° bearing from the Perrine NDB extending from the 6.4 mile radius to 7.9 miles south of the airport, and within 1.3 miles each side of the Farmington VORTAC 300° radial extending from the 6.4-mile radius to the VORTAC.

* * * * *

ACE MO E5 Kansas City International Airport, MO

Kansas City International Airport, MO
(lat. 39°17′57″ N., long. 94°43′05″ W.)
Kansas City Downtown Airport, MO
(lat. 39°07′24″ N., long. 94°35′34″ W.)
Fort Leavenworth, Sherman Army Airfield (AAF), KS
(lat. 39°22′06″ N., long. 94°54′53″ W.)
Kansas City VORTAC

(lat. 39°16′46″ N., long. 94°35′28″ W.)
DOTTE LOM
(lat. 39°13′15″ N., long. 94°45′00″ W.)
Riverside VOR/DME
(lat. 39°07′14″ N., long. 94°35′48″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Kansas City Downtown Airport and within 3 miles each side of the 210° radial of the Riverside VOR/DME extending from the 6-mile radius to 12.6 miles southwest of the Downtown Airport, and within a 6.5-mile radius of the Sherman AAF and within a 6-mile radius of the Kansas City International Airport, and within 4.4 miles each side of the Kansas City International Runway 19 ILS localizer north course extending from the 6-mile radius to 21.7 miles north of the DOTTE LOM, and within 4.4 miles each side of the 096° radial of the Kansas City VORTAC extending from the Kansas City International Airport 6-mile radius to 5 miles east of the Kansas City VORTAC, and within 2.5 miles each side of the Kansas City International Runway 1 ILS localizer south course extending from the 6-mile radius to 9.3 miles south of the DOTTE LOM.

* * * * *

ACE KS E5 Dodge City, KS

Dodge City Regional Airport, KS
(lat. 37°45′44″ N., long. 99°57′54″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Dodge City Regional Airport.

* * * * *

Issued in Kansas City, MO, on March 1, 1996.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 96–7296 Filed 3–25–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 95N–0103]

Food Labeling; Nutrient Content Claims and Health Claims; Special Requirements; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA), is correcting a proposed rule that appeared in the Federal Register of February 2, 1996 (61 FR 3885). The document proposed to require that, in certain circumstances, persons responsible for the labeling of foods with nutrient content and health claims maintain records that support the claims, and that they make those records available to appropriate regulatory officials upon request. The document was published with some errors. This document corrects those errors.

DATES: Written comments by April 17, 1996; except that comments regarding information collection requirements by March 4, 1996, but not later than April 2, 1996.

FOR FURTHER INFORMATION CONTACT: F. Edward Scarbrough, Center for Food Safety and Applied Nutrition (HFS–150), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4561.

In FR Doc. 96–2153, appearing on page 3885 in the Federal Register of Friday, February 2, 1996, the following corrections are made: On page 3888, in the third column, in footnote 1, in line 3, the second comma after ''7'' is removed; in the fourth line from the bottom, ''FTS'' is corrected to read ''FTC''; and in the third line from the bottom, the phrase ''F.2d 189, 193 (D.C. Cir. 1986), *cert. denied*, 479 U.S. 1086'' is added after ''791''.

Dated: March 18, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–7173 Filed 3–25–96; 8:45 am]

BILLING CODE 4160–01–F

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2615

RIN 1212–AA77

Reportable Events Negotiated Rulemaking Advisory Committee; Meeting

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of meeting.

SUMMARY: This notice announces the time and place of the next meeting of the Reportable Events Negotiated Rulemaking Advisory Committee.

DATES: The Committee will meet at 10:00 a.m. on Wednesday, April 10, 1996.

ADDRESSES: The meeting will be held at the PBGC's offices at 1200 K Street, NW., Washington, DC 20005–4026.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or James L. Beller, Attorney, Office of the General Counsel, PBGC, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024 (202–326–4179 for TTY and TTD).

SUPPLEMENTARY INFORMATION: On October 5, 1995, the PBGC announced the establishment of the Reportable Events Negotiated Rulemaking Advisory Committee (60 FR 52135). The ground rules for the Committee state that the deadline for negotiations, unless extended by the PBGC, is March 29, 1996. At the Committee's most recent meeting, held on March 13, 1996, the PBGC extended the deadline for negotiations to April 30, 1996.

The Committee agreed to meet again on April 10, 1996. The agenda for the April meeting includes reports from working groups and preparation of a consensus recommendation for the PBGC. The meeting will be open to the public.

Issued in Washington, DC, this 22 day of March, 1996.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 96–7378 Filed 3–25–96; 8:45 am]

BILLING CODE 7708–01–P–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

[SPATS No. NM–037–FOR]

New Mexico Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the New Mexico regulatory program (hereinafter, the ''New Mexico program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to or additions of rules pertaining to permit application contents for contour maps of the permit area and operations exclusively under reclamation, permit approval or denial, contents of bond release applications, timeliness of backfilling and grading, approval of small depressions, performance standards for all roads and primary roads, and blaster examination and certification requirements. The amendment is intended to revise the New Mexico program to incorporate the additional flexibility afforded by the revised Federal regulations, as

amended, and improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., m.d.t., April 25, 1996. If requested, a public hearing on the proposed amendment will be held on April 22, 1996. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.d.t., on April 10, 1996.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the New Mexico program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Guy Padgett, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., Suite 1200, Albuquerque, New Mexico 87102

Mining and Minerals Division, New Mexico Energy and Minerals Department, 2040 South Pacheco Street, Santa Fe, New Mexico 87505, Telephone: (505) 827–5970

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: (505) 248–5081.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, Federal Register (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.11, 931,15, 931.16, and 931.30.

II. Proposed Amendment

By letter dated March 11, 1996, New Mexico submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. NM–773, 30 U.S.C. 1201 *et seq.*). New Mexico submitted the proposed amendment at its own initiative. The provisions of the Coal Surface Mining Commission (CSMC) rules that New Mexico proposes to revise or add are:

CSMC Rule 80–1–5–23(a), concerning general requirements for permit applications, by adding a reference to Part 15 for mines exclusively under reclamation;

CSMC Rule 80–1–8–25(k), concerning contour maps with a maximum of 5 foot contour intervals in permit applications, by deleting specific requirements at CSMC Rule 80–1–8–25(k) (1) through (3) for showing the existing land surface configuration for the proposed affected areas and adding the requirement that the existing land surface configuration be shown for the proposed permit area;

CSMC Rule 80–1–11–19(c), concerning criteria for permit approval or denial, by adding the word ''hydrological'' to the phrase ''probable cumulative hydrological impacts'' and the acronym ''(CHIA)'' following the phrase;

CSMC Rule 80–1–14–40(a), concerning bond release applications, by adding a new paragraph (a)(2) which summarizes the minimum contents of an application for a bond release and revising recodified paragraph (a)(3) to delete a bond release application content requirement that is now part of new paragraph (a)(2);

CSMC Rule 80–1–15, concerning minimum requirements for permit applications for coal mining operations exclusively under reclamation, by adding a new Part 15 which consists of requirements for: general information at 15–11, information concerning identification of interests at 15–12(a) through (j), compliance information at 15–13(a) through (d), right of entry and operation information at 15–14(a) and (b), permit term information at 15–15(a) and (b), personal injury and property damage insurance information at 15–16, identification of other licenses and permits at 15–17(a) through (d), identification of location of public office for filing of application at 15–18, newspaper advertisement and proof of publication at 15–19, general environmental resources information at 15–20(a) through (f), the operation plan at 15–21(a) and (b), the fish and wildlife plan at 15–22(a) and (b), the reclamation plan including protection of the hydrologic balance, postmining land uses, and ponds, impoundments, banks, dams, and embankments, at respectively, 15–23(a) and (b), 15–24(a) through (e), 15–25(a) and (b), and 15–26(a) through (e), and protection of public parks and historic places at 15–27;

CSMC 80–1–20–101(a), concerning backfilling and grading requirements for contour mining, open pit mining, and strip mining, by deleting from 20–101(a)(1) through (3) all time limits by which backfilling and grading must commence so that the existing distance limits are the only measure of when backfilling and grading must commence, and replacing the term ''area strip mining'' with the term ''strip mining'' at 20–101(a)(3);

CSMC 80–1–20–102(c), concerning backfilling and grading to create small depressions, to add the allowance for New Mexico to approval small depressions if they create and enhance wildlife habitat;

CSMC 80–1–20–150(b), concerning performance standards for all roads, to delete the requirement at 20–150(b)(9) that all roads have, at a minimum, a static safety factor of 1.3 for all embankments;

CSMC 80–1–20–151(a), concerning performance standards for primary roads, to add at 20–151(a)(5) the requirement that all primary roads have a static factor of safety of 1.3, at a minimum, for all embankments; and

CSMC 80–1–33–14 and 80–1–33–15, concerning examination and certification for blasters, by deleting the existing requirements and replacing them with new requirements for (1) examination at 33–14(a) and (b) that include a written exam to demonstrate competence and a minimum of one year of practical field experience and (2) certification at 33–15(a) through (e) that include requirements for certification every four years, suspension and revocation of certification, recertification (by reexamination, training, and demonstration), protection of certification, and conditions for maintaining certification.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the New Mexico program.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m.,

m.d.t., on April 10, 1996. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OMS will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 19, 1996.

Russell F. Price,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 96–7288 Filed 3–25–96; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–96–015]

RIN 2115–AE46

Special Local Regulations; Harborwalk Boat Race, Sampit River, Georgetown, SC

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent special local regulations for the Harborwalk Boat Race. This event held annually on the last Sunday of June, between 12 p.m. and 5:30 p.m. Eastern Daylight Time. Historically, there have been approximately sixty participants racing 14 to 20 foot outboard power boats on a prescribed course on a portion of the Sampit River, Georgetown, SC. The nature of the event and the closure of the Sampit River creates an extra or unusual hazard in the navigable waters. These proposed regulations are necessary to provide for the safety of life on navigable waters during the event. By establishing these proposed permanent regulations, the Coast Guard expects to give better notice of requirements related to marine events, and also avoid the recurring costs of publication related with temporary regulations. However, the establishment of these proposed permanent regulations would not relieve the event organizers from applying for an annual marine event permit.

DATES: Comments must be received on or before May 28, 1996.

ADDRESSES: Comments may be mailed to Commander, U.S. Coast Guard Group Charleston, 196 Tradd Street, Charleston, SC 29401, or may be delivered to operations office at the same address between 7:30 a.m. and 3:30 p.m., Monday through Friday, except federal holidays. The telephone number is (803) 724–7621. Comments will become a part of the public docket and will be available for copying and inspection at the same address.

FOR FURTHER INFORMATION CONTACT: ENS M. J. DaPonte, Coast Guard Group Charleston at (803) 724–7621.

SUPPLEMENTARY INFORMATION:

Request for Comment

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names,

addresses, identify the notice (CGD07–96–015) and the specific section of this proposal to which their comments apply, and give reasons for each comment. The Coast Guard will consider all comments received during the comment period. The regulations may be changed in view of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

No public hearing is planned, but one may be held if the written requests for a hearing are received, and it is determined that the opportunity to make oral presentations will add to the rulemaking process.

Discussion of Proposed Regulations

The proposed regulations are needed to provide for the safety of life during the Harborwalk Boat Race. These proposed rules are intended to promote safe navigation on the waters off East Bay Park on the Sampit River during the race by controlling the traffic entering, exiting, and traveling within these waters. Historically, the anticipated concentration of spectator and participant vessels associated with the Harborwalk Boat Race has posed a safety concern, which is addressed in these proposed special local regulations. The proposed regulations would not permit movement of spectator vessels and other nonparticipating vessel traffic within the regulated area, bounded by a line drawn from

33°21.5′ N, 079°17.10′ W, thence to
33°21.7′ N, 079°16.8′ W, thence along the shore to
33°21.1′ N, 079°16.7′ W, thence to
33°21.1′ N, 079°16.9′ W, thence back to
33°21.5′ N, 079°17.10′ W

from 7 a.m. to 5:30 p.m. annually during the last Sunday of June. All coordinates use Datum: NAD 83. The proposed regulations would permit the movement of spectator vessels and other nonparticipants after the termination of race, and during intervals between scheduled events at the discretion of the Captain of the Port.

Regulatory Evaluation

This proposal is not a significant regulatory action under Section 3(f) of the Executive Order 12866 and does not require an assessment of the potential costs and benefits under Section 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The proposed regulation would last for only 5 and a half hours each day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under Section 3 of the Small Business Act (15 U.S.C. 632).

For reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

Collection of Information

These proposed regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient Federalism implication to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2. of Commandant Instruction M16475.1B. In accordance with that section, this proposed action has been environmentally assessed (EA completed), and the Coast Guard has concluded that it will not significantly affect the quality of the human environment. An environmental assessment and a finding of no significant impact have been prepared and are available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and record keeping requirements, Waterways.

Proposed Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is proposed to be amended as follows:

1. The authority citation for Part 100 continues to read as follows:

PART 100—[AMENDED]

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new section 100.713 is added to read as follows:

§ 100.713 Harborwalk Boat Race, Sampit River, Georgetown, SC.

(a) *Regulated Area.* The regulated area is formed by a line from:

33° 21.5′ N, 079° 17.10′ W; thence to
33° 21.7′ N, 079° 16.8′ W; thence along the shore to
33° 21.1′ N, 079° 16.7′ W; thence to
33° 21.1′ N, 079° 16.9′ W; thence back to
33° 21.5′ N, 079° 17.10′ W.

All coordinates use datum: NAD 83.

(b) *Special local regulations.* (1) Entry into the regulated area is prohibited to all nonparticipants.

(2) After the termination of the Harborwalk Boat Race, and during intervals between scheduled events, at the discretion of the Captain of the Port, all vessels may resume normal operations.

(c) *Effective Dates.* This section is effective at 12 p.m. and terminate at 5:30 p.m. annually during the last Sunday of June. However, the requirements of this section may be waived by a Coast Guard Notice to mariners.

Dated: March 12, 1996.

Roger T. Rufe, Jr.,

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

[FR Doc. 96–7307 Filed 3–25–96; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD07–96–014]

RIN 2115–AE46

Special Local Regulations; River Race Augusta; Augusta, GA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent special local regulations for the River Race Augusta. This event will be held annually on Friday, Saturday and Sunday during the second week of June, between 7 a.m. and 5 p.m. Eastern Daylight Time. Historically, there have been

approximately sixty participants racing 16 to 18 foot outboard power boats on that portion of the Savannah River at Augusta, GA, between U.S. Highway 1 (Fifth St) Bridge at mile marker 199.45 and Eliot's Fish Camp at mile marker 197. The boats would be competing at high speeds and at close range on a prescribed course. The nature of the event and the closure of the Savannah River creates an extra or unusual hazard in the navigable waters. These proposed regulations are necessary to provide for the safety of life on navigable waters during the event. By establishing these proposed permanent regulations, the Coast Guard expects to give better notice of requirements related to marine events, and also avoid the recurring costs of publication related with temporary regulations. However, the establishment of these proposed permanent regulations would not relieve the event organizers from applying for an annual marine event permit.

DATES: Comments must be received on or before May 15, 1996.

ADDRESSES: Comments may be mailed to Commander, U.S. Coast Guard Group Charleston, 196 Tradd Street, Charleston, SC 29401, or may be delivered to operations office at the same address between 7:30 a.m. and 3:30 p.m., Monday through Friday, except federal holidays. The telephone number is (803) 724–7621. Comments will become a part of the public docket and will be available for copying and inspection at the same address.

FOR FURTHER INFORMATION CONTACT: ENS M.J. DaPonte, Coast Guard Group Charleston at (803) 724–7621.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names, addresses, identify the notice (CGD07–96–014) and the specific section of this proposal to which their comments apply, and give reasons for each comment. The Coast Guard will consider all comments received during the comment period. The regulations may be changed in view of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

No public hearing is planned, but one may be held if the written requests for a hearing are received, and it is determined that the opportunity to make oral presentations will add to the rulemaking process.

Discussion of Proposed Regulations

The proposed regulations are needed to provide for the safety of life during the River Race Augusta. These proposed regulations are intended to promote safe navigation on the waters off Augusta on the Savannah River during the races by controlling the traffic entering, exiting, and traveling within these waters. Historically, the anticipated concentration of spectator and participant vessels associated with the River Race has posed a safety concern, which is addressed in these proposed special local regulations. The proposed regulations would not permit the entry or movement of spectator vessels and other nonparticipating vessel traffic between the U.S. Highway Route 1 (Fifth Street) Bridge at mile marker 199.45 and Eliot's Fish Camp at mile marker 197 from 7 a.m. to 5 p.m. annually, Friday, Saturday and Sunday of the second week of June. The proposed regulations would permit the movement of spectator vessels and other non-participants after the termination of race each day, and during intervals between scheduled events at the discretion of the Coast Guard Patrol Commander.

Regulatory Evaluation

This proposal is not a significant regulatory action under Section 3(f) of the Executive Order 12866 and does not require an assessment of the potential costs and benefits under Section 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The proposed regulation would last for only 10 hours each day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under Section 3 of the Small Business Act (15 U.S.C. 632).

For reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605 (b) that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

Collection of Information

These proposed regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact on this proposal consistent with Section 2.B.2. of Commandant Instruction M16475.1B. In accordance with that section, this proposed action has been environmentally assessed (EA completed), and the Coast Guard has concluded that it will not significantly affect the quality of the human environment. An environmental assessment and a finding of no significant impact have been prepared and are available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and record keeping requirements, Waterways.

Proposed Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is proposed for amendment as follows:

1. The authority citation for Part 100 continues to read as follows:

PART 100—[AMENDED]

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35

2. A new section 100.712 is added to read as follows:

§ 100.712 Annual River Race Augusta; Savannah River, Augusta GA.

(a) *Definitions:* (1) *Regulated area.* The regulated area is formed by a line drawn directly across the Savannah River at the U.S. Highway 1 (Fifth Street) Bridge at mile marker 199.45 and directly across the Savannah River at Eliot's Fish Camp at mile marker 197. The regulated area would encompass

the width of the Savannah River between these two lines.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Charleston, South Carolina.

(b) *Special local regulations.* (1) Entry into regulated area is prohibited to all non-participants.

(2) After termination of the River Race Augusta each day, and during intervals between scheduled events, at the discretion of the Coast Guard Patrol Commander, all vessels may resume normal operations.

(c) *Effective Dates.* This section is effective at 7 a.m. and terminates at 5 p.m. annually on Friday, Saturday and Sunday of the second week of June. However, the requirements of this section may be waived by a Coast Guard Notice to mariners.

Dated: March 13, 1996.

Roger T. Rufe, Jr.,

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

[FR Doc. 96–7306 Filed 3–25–96; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD07–96–018]

RIN 2115–AE46

Special Local Regulations; Miami Super Boat Race; Miami Beach, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish permanent special local regulations for the Miami Super Boat Race. This event will be held annually on the second Sunday of June, between 12:30 p.m. and 3:30 p.m. Eastern Daylight Time. Historically, there have been approximately 35 participant and 200 spectator craft. The resulting congestion of navigable channels creates an extra or unusual hazard in the navigable waters. These proposed regulations are necessary to provide for the safety of life on navigable waters during the event. By establishing these proposed permanent regulations, the Coast Guard expects to give better notice of requirements related to marine events, and also avoid the recurring costs of publication related with temporary regulations. However, the establishment of these proposed permanent regulations would not relieve the event organizers from applying for an annual marine event permit.

DATES: Comments must be received on or before May 15, 1996.

ADDRESSES: Comments may be mailed to U.S. Coast Guard Group Miami, 100 Macarthur Causeway, Miami Beach, FL 33139–5101 or may be delivered to operations office at the same address between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (305) 535–4448. Comments will become a part of the public docket and will be available for copying and inspection at the same address.

FOR FURTHER INFORMATION CONTACT: QMC T. E. Kjerulff, Coast Guard Group Miami, FL at (305) 535–4448.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names, addresses, identify the notice (CGD07–96–018) and the specific section of this proposal to which their comments apply, and give reasons for each comment. The Coast Guard will consider all comments received during the comment period. The regulations may be changed in view of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

No public hearing is planned, but one may be held if the written requests for a hearing are received, and it is determined that the opportunity to make oral presentations will add to the rulemaking process.

Discussion of Proposed Regulations

The proposed regulations are needed to provide for the safety of life during the Miami Superboat Race. This event will be held annually on the second Sunday of June, between 12:30 p.m. and 3:30 p.m. Eastern Daylight Time. These regulations are intended to promote safe navigation on the waters off Miami Beach during the races by controlling the traffic entering, exiting, and traveling within these waters. Historically, there have been approximately 35 participant and 200 spectator craft during the race. The anticipated concentration of spectator and participant vessels associated with the Miami Super Boat Race poses a safety concern, which is addressed in these proposed special local regulations. The resulting congestion of navigable channels creates an extra or unusual hazard in the navigable waters. These regulations are intended to promote safe navigation on the waters off Miami Beach during the race by restricting vessels from entering the race area described below and permit anchoring only in the designated spectator area.

The proposed race area would be formed by a line joining the following points:

25°46.3′ N, 080°07.85′ W; thence to,
25°46.3′ N, 080°06.82′ W; thence to,
25°51.3′ N, 080°06.2′ W; thence to,
25°51.3′ N, 080°07.18′ W; thence along the shoreline to the starting point. All coordinates referenced use datum: NAD 1983.

A spectator area would be established in the regulated area for spectator traffic and would be defined by a line joining the following points, beginning from:

25°51.3′ N, 080°06.15′ W; thence to,
25°51.3′ N, 080°05.85′ W; thence to,
25°46.3′ N, 080°06.55′ W; thence to,
25°46.3′N, 080° 06.77′ W; and back to the starting point.

All coordinates referenced use datum: NAD 1983. The proposed regulation would also include a buffer zone of 300 feet between the race course and the spectator area defined above.

Entry into the proposed regulated area by other than event participants would be prohibited unless otherwise authorized by the Coast Guard Patrol Commander. However, the Coast Guard Patrol Commander could at his discretion permit traffic to resume normal operations between scheduled racing events.

The proposed regulations would also establish safety measures of 5 short whistle or horn blasts from a patrol vessel to signal any and all vessels to take immediate steps to avoid collision. The display of an orange distress smoke signal from a patrol vessel would be the signal for any and all vessels to stop immediately. All spectators not in the designated spectator areas above would be required to remain clear of the race area at all times.

Regulatory Evaluation

This proposal is not a significant regulatory action under Section 3(f) of the Executive Order 12866 and does not require an assessment of the potential costs and benefits under Section 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a

full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The proposed regulation would last for only 4 hours each day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under Section 3 of the Small Business Act (15 U.S.C. 632).

For reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

Collection of Information

These proposed regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal and has concluded that preparation of an Environmental Impact Statement is not necessary. An Environmental Assessment and Finding of No Significant Impact are available in the docket for inspection or copying where indicated under **ADDRESSES**. The Coast Guard has concluded that this proposed action would not significantly affect the quality of the human environment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and record keeping requirements, Waterways.

Proposed Regulations

in consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is proposed to be amended as follows:

1. The authority citation for Part 100 continues to read as follows:

PART 100—[AMENDED]

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new section 100.714 is added to read as follows:

§ 100.714 Annual Miami Super Boat Race; Miami Beach, FL.

(a) *Definitions:* (1) *Regulated Areas.* The regulated area includes the race course area, the spectator area, and a buffer zone.

(i) The race course area is formed by a line joining the following points:

25°46.3′ N, 080°07.85′ W; thence to,
25°46.3′ N, 080°06.82′ W; thence to,
25°51.3′ N, 080°06.2′ W; thence to,
25°51.3′ N, 080°07.18′ W; thence along the shoreline to the starting point.

All coordinates referenced use datum: NAD 1983.

(ii) A spectator area is established in the regulated area for spectator traffic and is defined by a line joining the following points, beginning from:

25° 51.3′ N, 080° 06.15′ W; thence to,
25° 51.3′ N, 080° 05.85′ W; thence to,
25° 46.3′ N, 080° 06.55′ W; thence to,
25° 46.3′ N, 080° 06.77′ W; and back to the starting point.

All coordinates referenced use datum: NAD 1983.

(iii) A buffer zone of 300 feet is established between the race course and the spectator area.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Captain of the Port, Miami, Florida.

(b) *Special local regulations:* (1) Entry into the race course area by other than event participants is prohibited unless otherwise authorized by the Coast Guard Patrol Commander. At the completion of scheduled races and departure of participants from the regulated area, traffic may resume normal operations. At the discretion of the Coast Guard Patrol Commander, between scheduled racing events, traffic may be permitted to resume normal operations.

(2) A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any and all vessels to take immediate steps to avoid a collision. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(3) Spectators not in the designated spectator areas, defined in paragraph (a) of the regulated area, are required to maintain clear of the race course area at all times.

(c) *Effective Dates:* This section is effective at 12 p.m. and terminates at 4 p.m. Eastern Daylight Time annually during the second Sunday of June.

Dated: March 14, 1996.

Roger T. Rufe, Jr.,

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

[FR Doc. 96–7303 Filed 3–25–96; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 183

[CGD 95–041]

Propeller Injury Prevention Aboard Rental Boats

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The purpose of this Advance Notice of Proposed Rulemaking (ANPRM) is to gather current, specific, and accurate information about the injuries involving propeller strikes and rented boats. In a request for comments published May 11, 1995, the Coast Guard solicited comments from all segments of the marine community and other interested persons on various aspects of propeller accident avoidance aboard houseboats and other displacement type recreational vessels. The information received was voluminous, but was too general to be helpful. Consistent with the President's Regulatory Reinvention Initiative, the Coast Guard is interested in obtaining maximum public involvement before it makes any decision that would impose a new burden on the regulated community. Information gathered in response to this ANPRM will supplement that which the Coast Guard received in response to the request for comments and will be used to determine the appropriate Federal and State roles in reducing propeller-strike incidents, whether governmental intervention is appropriate and, if so, whether it should be directed at the vessels, their manufacturers, their operators or owners, or the companies leasing such vessels. This ANPRM also announces one public meeting at Coast Guard Headquarters at which individuals and interested parties may make oral presentations about the propeller strike avoidance issue. The Coast Guard has also arranged four other opportunities, throughout the country, for those interested in this subject to express their views.

DATES: Comments must be received on or before September 1, 1996.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406)(CGD95–041),

U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this notice. Comments will become a part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Randolph Doubt, Project Manager, Recreational Boating Product Assurance Division, (202) 267–0984.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to submit written data, views or arguments. Persons submitting comments should include their names and addresses and identify this notice (CGD 95–041). Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period.

Background Information

The Coast Guard published a request for comments on propeller accidents involving houseboats and other displacement type recreational vessels on May 11, 1995 [60 FR 25191]. In a second Federal Register notice published August 9, 1995, the Coast Guard reopened and extended the comment period until November 7, 1995. The Coast Guard received 1,994 responses. More than 1,800 of these were form letters from individuals who support the development of regulations to require the use of propeller guard technology or pump jet propulsion on vessels used in the rental houseboat industry. An additional 69 comments supporting the development of regulations to prevent the incidence of propeller-strike accidents were received from accident victims and their relatives, attorneys, physicians, State law enforcement agencies, manufacturers of devices designed to prevent propeller-strike accidents, and other individuals. Comments opposing regulations were received from 57 boaters, nine houseboat livery operators and marinas, members of 10 associations, committees, or councils, 13 boat and engine manufacturers, and six naval architects or marine consultants.

Solicitation of Views

While available data in the Coast Guard's regulatory docket on this subject does not fully support the costs or burdens that would be imposed by Federal regulation, the number of responses received to the request for comments indicates a great deal of public interest in whether and how the Federal Government should act to prevent propeller-strike accidents.

Persons submitting comments should do as directed under **REQUEST FOR COMMENTS** above, and reply to the following specific questions. Form letters simply citing anecdotal evidence or stating support for, or opposition to regulations, without providing substantive data or arguments do not supply support for regulations.

1. The Coast Guard is making an effort to improve its database of recreational boating accidents resulting in injuries which require medical treatment beyond first aid. Part of that effort consists in trying to determine the extent to which accidents involving propeller strikes by rented boats are a problem. What information is available regarding the incidence of propeller-strike injuries or fatalities involving individuals who rent boats, and what trends, if any, do the data indicate?

2. To what extent are data available to indicate whether the type of propulsion (e.g., outboard motor, inboard engine or inboard-outboard engine) contributes to the incidence of propeller-strike accidents involving rental boats?

3. In two fatal accidents during the last several years, one on Lake Shasta and one on Lake Havasu, the victim was in the water and was struck by the propeller when a rental houseboat was put in reverse and backed into them. Several other houseboat accidents have resulted in injuries. The Coast Guard is interested in determining whether accidents involving propeller strikes and rented houseboats occur nationwide, or are limited to a few States or bodies of water. If the latter is the case, do any particular hazardous local conditions contribute to the likelihood of such accidents? If so, the Coast Guard is interested in determining the nature and location of those conditions.

4. To what extent are data available on the relationship between the consumption of alcohol or the use of controlled substances and propeller-strike accidents involving rental boats?

5. Some States have laws requiring boat operators to complete a boating safety course.

a. To what extent do available data indicate whether boater behavior patterns, a lack of boating education, or a lack of boating law enforcement contribute to the incidence of propeller-strike accidents involving rental boats?

b. Do data indicate whether mandatory boating education for individuals renting boats with propellers significantly contribute to a reduction in the number of propeller-strike accidents?

c. If so, do data indicate what type of boating education would be the most effective?

d. What other vessel operator-oriented requirements might reduce the incidence of propeller-strike accidents involving rental boats?

e. What economic or other burdens would be imposed on companies leasing recreational boats if either the Federal or State Government was to require education of individuals renting propeller-driven boats?

6. The two fatal accidents mentioned above occurred when individuals were in the water astern of the vessels and the vessels were put in reverse. While limited operator visibility astern may have contributed to the accidents, the transom is also the usual location for swim platforms and boarding ladders for swimmers. Do available data indicate whether vessel design features contribute to the incidence of propeller-strike accidents involving rental boats? If so, what vessel design features might reduce the incidence of propeller-strike accidents involving rental boats?

7. Are there any proven technologies that would help reduce the risk of propeller-strike accidents involving rented boats? What technologies are unacceptable, and for what reasons?

8. The two fatal accidents mentioned above involved rental houseboats. If the Coast Guard developed regulations in this area, how should it define the term, ''houseboat?'' Are there any other vessel types the Coast Guard should consider regulating? If so, what vessels, if any, should be excepted from such regulations?

9. What, if any, types of information should be displayed on boats and/or motors leased, rented or chartered for noncommercial use for the purpose of alerting operators or passengers to the dangers of a propeller strike?

10. What are the economic and other impacts on companies renting boats or other entities if the Coast Guard were to require companies to retrofit such vessels with devices or methods of propulsion designed to reduce the

incidence of propeller-strike accidents? In considering regulations, the Coast Guard must assess the potential adverse impacts on small business entities. To what extent are small entities engaged in leasing recreational boats?

11. a. How many companies are currently leasing propeller-driven boats for bareboat charters by the recreational boating public? How many vessels are involved and on which bodies of water?

b. How many companies are currently offering propeller-driven uninspected boats for charter by the recreational boating public? How many vessels are involved and on which bodies of water?

12. What adverse impacts might result from a regulation requiring livery companies to verbally brief individuals renting propeller-driven boats about the dangers of propeller-strike accidents, and requiring individuals chartering such vessels to acknowledge receiving the information?

13. Under current Federal statutes (46 U.S.C. 4306), the States do not have the authority to establish carriage requirements for associated equipment, such as a mechanical means for preventing propeller strikes, on vessels operated on waters where both the Coast Guard and the State have jurisdiction. However, a State may impose more stringent requirements on vessels such as rental boats on waters subject to the State's exclusive jurisdiction, so long as such a requirement is not imposed upon vessel manufacturers. What is the proper role for the States in reducing propeller-strike accidents involving rented boats? If the Coast Guard allowed the States to regulate the equipment carried, or the use of rental boats, how would interstate commerce be affected?

Open Meetings

A subcommittee of the National Boating Safety Advisory Council, and the National Association of State Boating Law Administrators are studying the propeller injury prevention issue. The Coast Guard invites interested parties and the public to make brief oral presentations about the propeller injury prevention issue during the following meetings or events:

From 5 to 7 p.m., Monday, April 22, 1996 at the National Water Safety Congress Professional Development Seminar at the Boardwalk Resort in Panama City, FL, (April 23–25, 1996).

From 3 to 5 p.m., Monday April 29, 1996 at the National Boating Safety Advisory Council Meeting at the Parc Fifty-Five Hotel in San Francisco, CA (April 27–29, 1996).

From 8:30 to 10:30 a.m., Wednesday May 1, 1996 at the Northeastern States Boating Law Administrators Conference in the Camden Room at the Samoset Resort in Rockland, ME (April 29–30, 1996).

From 1 to 4 p.m., Monday, May 6, 1996 in Room 2415 of Coast Guard Headquarters in Washington, DC.

From 10 a.m. to 12 p.m., Sunday, May 19, 1996 at the Southern States Boating Law Administrator Conference at the Royal Sonesta Hotel in New Orleans, LA (May 18–22, 1996).

Those wishing to give an oral presentation should submit their name, address, and organization represented (if any) at least seven days prior to the particular meeting or event, to COMMANDANT (G–NAB–6), room 1505, U.S. Coat Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, Attn: Mr. Jay Doubt. Individuals wishing to give an oral presentation who fail to notify the Coast Guard within seven days of a particular meeting or event will be allowed to do so if time permits.

Those giving oral presentations are reminded of the necessity to also furnish written comments, if those comments are intended for inclusion in the regulatory docket.

The Coast Guard will consider all relevant comments in determining what action may be necessary to address propeller accidents involving rented propeller-driven vessels.

Dated: March 15, 1996.

Rudy K. Peschel,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 96–7304 Filed 3–25–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–5446–8]

Proposed Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act (Act) Section 112(g)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of reopening of comment period; notice of availability of draft rule.

SUMMARY: The EPA is reopening the comment period for the proposed rule implementing section 112(g) of the Act and is announcing the availability of a revised draft of the proposal. Section 112(g) establishes requirements for owners or operators who intend to construct, reconstruct, or modify a major source of hazardous air pollutants (HAP). When no emission standard has been promulgated under section 112(d) of the Act, determinations concerning such sources must be made on a case-by-case basis. Today's notice announces the availability of a revised draft of the proposed rule which implements section 112(g)(2)(B) of the Act with respect to constructed or reconstructed major sources, and requests comment on the revised draft. The EPA does not intend at this time to issue a rule implementing the provisions of section 112(g) which concern modifications.

DATES: The revised draft of the proposed rule will be available in the public docket and on the EPA electronic bulletin board on the date this document is signed. Comments concerning this document or the revised draft rule must be received by EPA on or before April 25, 1996.

ADDRESSES: The revised draft rule and other information pertaining to the proposed rule are contained in Docket Number A–91–64. The docket is available for public inspection and copying from 8:30 a.m. to 12:00 p.m. and 1:00 p.m. to 3:00 p.m., Monday through Friday, at the EPA's Air Docket Section, Waterside Mall, Room M1500, EPA, 401 M Street, Southwest, Washington, DC 20460. A reasonable fee may be charged for copying. The draft rule is also available on the Office of Air Quality Planning and Standards (OAQPS) electronic bulletin board, the Technology Transfer Network (TTN), under Clean Air Act, Title III, Recently Signed Rules. For information on how to access the TTN, please call (919) 541–5384 between the hours of 1:00 p.m. and 5:00 p.m. eastern standard time.

Comments concerning this notice or the revised draft rule should be submitted (in duplicate if possible) to: Central Docket Section (6102), EPA, Attn: Air Docket No. A–91–64, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Ms. Gerri Pomerantz, telephone (919) 541–2371, or Ms. Kathy Kaufman, telephone (919) 541–0102, Information Transfer and Program Integration Division (MD–12), OAQPS, EPA, Research Triangle Park, NC, 27711.

SUPPLEMENTARY INFORMATION: The information in this notice is organized as follows:

I. Background and Major Differences between the Proposed Rule and Draft Final Rule
II. Definition of ''Construct a Major Source''
III. Review of Applications for a maximum achievable control technology (MACT) Determination
IV. Extensions of Compliance Date for Subsequent Emission Standards

I. Background and Major Differences Between the Proposed Rule and Draft Final Rule

In designing a program to implement MACT requirements under section 112(g), the EPA is guided by the need to balance several, often competing, goals. Given a complex statutory mandate, the EPA has the difficult task of designing a rule that is simultaneously environmentally protective, maintains consistency across Agency programs, minimizes the administrative burden on sources and States, provides flexibility to sources, and maintains enforceability—yet is not overly complex. The EPA's task is to create a coherent regulatory whole that strikes the right balance among a broad set of goals.

Section 112(g) is primarily a transitional program designed to operate until MACT standards issued under section 112(d) are in effect for all categories of major sources of HAP. To date, the EPA has issued 17 MACT standards covering 29 categories of major sources of HAP emissions, and has proposed five additional MACT standards covering 18 source categories. The EPA is currently developing all of the MACT standards that are due to be completed in 1997, as well as several of the standards due to be completed in 2000.

The EPA has concluded that the greatest benefits to be derived from section 112(g) would be from the control of major source construction and reconstruction in the period before these MACT standards go into effect. Therefore the EPA has determined that today's draft rule should implement only that portion of section 112(g) which requires new source MACT determinations for constructed and reconstructed major sources, but not that portion which requires existing source MACT determinations for modifications of existing sources. The EPA requests comment on this approach.

Under this approach, sources of toxic air pollution will be controlled at the time of construction or reconstruction, when controls are most cost-effective to install. This is a major streamlining and simplification step that will focus section 112(g) implementation where it will provide the greatest reduction in emissions to the environment, certainty to the regulated community, and reduce the overall administrative burden on both regulators and the regulated community.

The EPA's decision to implement only the construction and reconstruction provisions of section 112(g) is premised in part on the Agency's ability to issue the remaining MACT standards under section 112(d) in a timely way, and also in part on the assumption that where there are existing State air toxics programs that address modifications, they will continue to operate as they do currently. If there were substantial delays in issuance of MACT standards, or radical changes to existing State programs, increased exposure to emissions from unregulated sources of HAP could occur and threaten public health and the environment. If such delays were to occur, the EPA would reconsider whether to move forward to cover modifications under section 112(g).

The EPA believes that Congress's basic goal in adopting section 112(g) of the Act was to make use of the opportunity for environmental protection that exists when major sources of HAP undergo changes that would lead to significant emission increases. The opportunity to evaluate emission control technologies, or other beneficial ways to bring about environmental improvements, generally exists because the environmental improvements are more efficient when built as part of the initial design.

The EPA also recognizes that it is critical to the success of the program to ensure that its provisions are enforceable and provide the greatest possible incentive for compliance. At the same time, the EPA recognizes the need to minimize administrative delays and grant sources and permitting authorities the flexibility to seek environmentally beneficial alternative means of control.

Finally, the program must be as consistent as possible with other Federal air pollution control programs, and must be simple enough to ensure smooth implementation. Today's draft rule eliminates much of the complexity inherent in the portion of section 112(g) which covers modifications to existing sources. Among other things, under this simpler approach, it will not be necessary to proceed with development of de minimis emission values or the hazard ranking system necessary to support offset determinations. It will also not be necessary to address the multitude of issues and concerns, raised in the proposed rule, associated with defining the types of operations that would be considered ''modifications.''

II. Definition of ''Construct a Major Source''

Today's draft rule does require additional discussion to clarify the conditions under which a stationary source would require a new source MACT determination; i.e., what criteria must be met for new equipment to be considered construction or reconstruction of a major source. The new equipment which would meet these criteria is referred to as the ''affected source.'' The EPA intends that either a major source constructed on a greenfield site, or a new major-emitting stationary source with a discrete function at an existing plant site, such as a new discrete process or production unit, should be considered construction of a major source, and thus require a new source MACT determination. The stationary source must also itself be inherently major-emitting; the EPA does not intend that a new process unit causing increased emissions at another unit downstream should be covered by today's draft rule. The EPA requests comment on this overall approach.

Figure (1) illustrates how the definition of ''construct a major source'' works.

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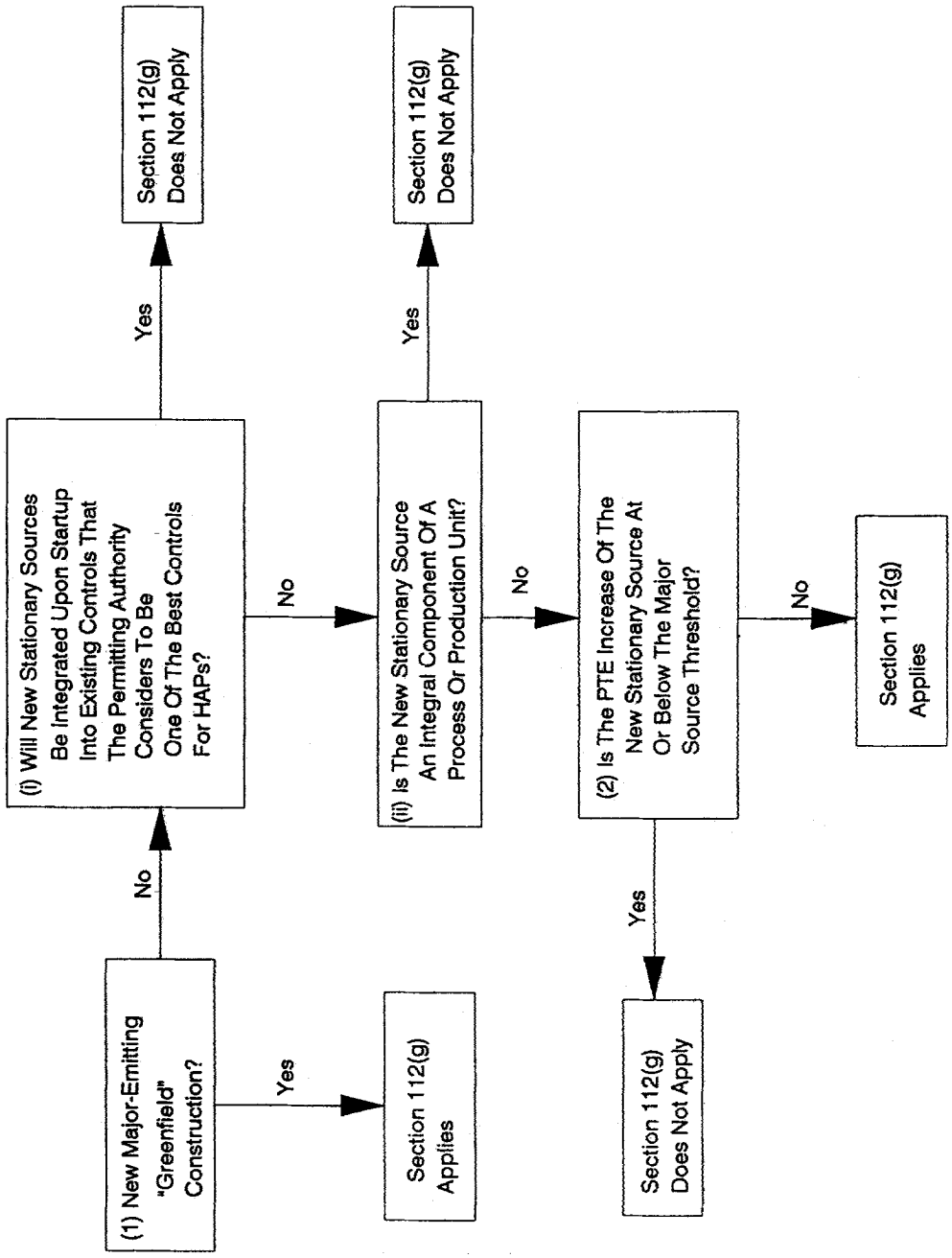
FIGURE 1: CONSTRUCT A MAJOR SOURCE



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If the stationary source is constructed on a greenfield site and is major-emitting, then the stationary source is an affected source under section 112(g), and must apply new source MACT. If the stationary source is being constructed at an existing plant site, then several other criteria will determine whether it is to be considered an affected source under section 112(g), and must apply new source MACT.

Box (i) (the box labels refer back to the sections of the ''construct a major source'' definition in the draft rule) asks: Will the stationary source be controlled by existing emission control equipment which the permitting authority has determined represents one of the best technologies for control of HAP? If a new source can be incorporated into such existing control technology without any reduction in the degree of control of HAP, the new source would not be considered ''construction'' under section 112(g)(2)(B). The state permitting authority will be responsible for determining whether these criteria apply, using those procedures it deems most appropriate.

The general purpose of this exclusion from the definition of ''construct a major source'' is to assure that facilities which have previously installed good control equipment with presently unutilized capacity will not be precluded from fully utilizing such equipment by any marginal differences in control effectiveness between such equipment and that required by new source MACT. Existing controls should be deemed satisfactory only where they are representative of the best technologies presently in use and the addition of new sources to existing control equipment will not impair its overall effectiveness. The rule also explicitly recognizes that some facilities have previously installed such controls to comply with a best available control technology (BACT) determination (that controls the HAP emitted by the stationary source) under the prevention of significant deterioration (PSD) program, a lowest-achievable emission rate (LAER) determination under the new source review (NSR) program, or a toxics-best available control technology (T-BACT) determination under a State or local air toxics control program. The EPA requests comment on this exclusion.

The EPA notes that the definition of a ''green-field site'' in the draft rule includes developed sites which do not presently emit major source quantities of HAP. EPA therefore requests comment concerning whether the exclusion for new sources that use existing emission controls should be applied to area sources that are within the definition of a ''green-field site.''

Box (ii) asks: Is the new stationary source an integral component of a larger process or production unit? If the source is a discrete process unit or production unit as defined in the rule, and emissions from the source exceed the major source threshold, it meets the definition of an ''affected source'' under section 112(g) and is subject to new source MACT control. The EPA requests comment on this exclusion.

What does it mean to be an integral component of a larger process or production unit? Today's rule defines ''integral component of a larger process or production unit'' to be a stationary source or group of stationary sources whose function, and the function of the process unit or production unit, are interdependent. In other words, the stationary source is the kind of component upon which the functioning of the process or production unit relies, and vice versa. Equipment which is an integral component of a process or production unit is part of the functioning of the overall process or production unit. Under the proposed definition, equipment which is not an integral component itself comprises a process or production unit.

The EPA acknowledges that there is some room for judgment in determining if a stationary source is an integral component of a larger unit. Each individual determination should be based on answers to the following questions: Is the new stationary source a component critical to the function of the larger process or production unit? Could the stationary source stand alone as an individually functioning unit if constructed elsewhere? Could the stationary source be reasonably controlled independently of the larger process? Reference documents such as AP–42 [1] describe examples of different groupings of stationary sources that should be considered to be separately-controlled processes, as well as those stationary sources, contained within such processes, which should be considered integral components. Examples in these reference documents, where relevant, should be used to define a process or production unit.

The following examples should help illustrate where section 112(g) should and should not apply. The EPA requests comment on these examples.

1. An electronics manufacturing facility replaces individual manufacturing equipment such as etching, plating, or photolithography equipment with next generation etching, plating or photolithography equipment. This equipment change would not trigger section 112(g), because the individual etching or plating or photolithography equipment is the kind of component upon which the functioning of the larger production process relies. Therefore the function of the new stationary source (the new etching, plating, or photolithography equipment) and the larger production process are interdependent.

2. An aluminum reduction plant has several potlines. Each potline consists of many pots, which are controlled using a common dry scrubbing system. The company replaces a few pots on each line. This equipment change would not trigger section 112(g), because the individual pots are the kind of component upon which the functioning of the larger production process relies. Therefore the function of the new stationary source (the new pots) and the larger production process are interdependent.

3. A chemical plant builds a new distillation column, to be added to a series of distillation columns, the emissions from which are collected at the end of the series and vented to a carbon absorber. This equipment change would not trigger section 112(g), because the individual distillation columns are the kind of component upon which the functioning of the larger production process relies. Therefore the function of the new stationary source (the new distillation column) and the larger production process are interdependent.

4. A composites manufacturer adds additional vacuum and/or in-mold coating capability to an existing mold, in order to improve surface quality. This equipment change would not trigger section 112(g), because the additional components of the mold are the kind of components upon which the functioning of the larger production process relies. Therefore the function of the new stationary source (the new components of the mold) and the larger production process are interdependent.

5. A glass manufacturer adds a new glass furnace and associated process line which will emit HAPs in amounts above the major source threshold. This is an example of a stationary source which is not an integral component of a process or production unit, because it is itself a production or process unit. Therefore the new furnace meets the definition of ''affected source'' under section 112(g) and should be controlled with new source MACT.

6. A composites manufacturer adds a new large molding line which will emit

[1] U.S. EPA, AP–42, ''Compilation of Air Pollutant Emission Factors,'' 5. ed., January 1995.

HAPs in amounts above the major source threshold. This is an example of a stationary source which is not an integral component of a process or production unit, because the molding line is itself a separately functioning process unit. Therefore the molding line meets the definition of ''affected source'' under section 112(g) and should be controlled with new source MACT.

7. An auto parts manufacturer adds a new automobile surface coating line (i.e., from body shop to trim shop) which will emit HAPs in amounts above the major source threshold. This is an example of a stationary source which is not an integral component of a process or production unit, because the line is itself a separately functioning process unit, as described in AP–42. Therefore the coating line meets the definition of ''affected source'' under section 112(g) and should be controlled with new source MACT.

8. An existing chemical plant builds a new nitric acid plant onsite which will emit HAPs in amounts above the major source threshold. This is an example of a stationary source or group of stationary sources which is not an integral component of a process or production unit. Therefore the nitric acid plant meets the definition of ''affected source'' under section 112(g) and should be controlled with new source MACT.

9. A manufacturer replaces an entire process which is similar to an entire process as it is described in AP–42. This is an example of a stationary source or group of stationary sources which is not an integral component of a process or production unit. Therefore the process meets the definition of ''affected source'' under section 112(g) and should be controlled with new source MACT, provided that it will emit HAPs in amounts above the major source threshold.

III. Review of Applications for a MACT Determination

Today's draft rule contains three options for preconstruction review procedures for constructed and reconstructed major sources. The permitting authority has discretion to prescribe those procedures to be used in making a case-by-case MACT determination for constructed or reconstructed major sources (except that the owner or operator of the source may elect to use the part 70 or part 71 permitting process). The proposed rule allowed use of either the part 70 or 71 permitting process or a process, described in the proposed rule and in today's draft rule, culminating in issuance of a ''Notice of MACT Approval.'' Today's draft rule adds one more option, designed to provide flexibility to the permitting authority and the source. Proposed section 63.43(c)(2)(ii) provides that if a permitting authority establishes, or has already established, preconstruction review procedures for sources to follow, then these procedures may be used in lieu of any procedures prescribed by today's draft rule. The permitting authority's prescribed procedures may have been developed for other purposes beyond implementation of section 112(g), so long as they provide for public participation in the case-by-case MACT determination and ensure that a final MACT determination will be made prior to construction or reconstruction. The draft rule also provides that a final case-by-case MACT determination issued pursuant to any of these procedures will be deemed federally enforceable. The permitting authority need not obtain delegation under 40 CFR Part 63 subpart E in order to adopt its own review procedures for a case-by-case MACT determination. The EPA requests comment on this new provision.

The EPA also requests comment specifically on the presumption, in section 63.43(d)(iv), that the constructed or reconstructed major source should comply with the emission limitation set out in a relevant proposed MACT standard or presumptive MACT determination made by the EPA. The EPA believes that sources would be well-advised to comply with such emission limitations, as those limitations would be most likely to be consistent with the requirements of the eventual MACT standard.

IV. Extensions of Compliance Date for Subsequent Emission Standards

The EPA anticipates that new source MACT requirements adopted with respect to construction or reconstruction of a particular source under section 112(g)(2)(B) will normally be at least as stringent as any subsequent requirements for existing sources adopted as part of a MACT standard issued under section 112(d). However, should a subsequently promulgated MACT standard impose more stringent requirements, EPA believes that it may be appropriate in some instances for EPA to establish a later compliance date for those sources which have acted in reliance on a prior case-by-case MACT determination. The draft rule expressly provides that EPA may establish separate compliance dates for facilities which have notified EPA of such determinations in a timely manner. Specifically, EPA may establish, in the MACT standard, a later compliance date for those sources which have installed controls pursuant to section 112(g), and have provided the EPA with data on their section 112(g) control determination by the end of the public comment period on the subsequent Federal standard.

The EPA requests comment on this approach, and on whether such sources should be required to inform EPA, before proposal of the subsequent MACT standard, that they have installed section 112(g) controls.

In those instances where the subsequent MACT standard does not establish a compliance date for sources subject to a prior case-by-case MACT determination, the present draft rule retains the provision from the original proposal authorizing the permitting authority to grant up to eight years of additional time for the affected source to comply with the subsequent MACT standard. The EPA has previously explained that the structure of section 112 as a whole supports such a construction of section 112(g), and a source may also be afforded up to 8 years to comply with a MACT standard in instances where a prior emission limitation has been established by permit under section 112(j). The EPA requests comment on these provisions and this interpretation.

Dated: March 18, 1996.

Mary D. Nichols,

Assistant Administrator.

[FR Doc. 96–7277 Filed 3–25–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 261

[FRL–5446–3]

RIN 2050–AE31

Identification and Listing of Hazardous Waste; Amendments to Definition of Solid Waste

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing to correct the text of a regulatory exclusion from the regulatory definition of solid waste for recovered oil which is inserted into the petroleum refining process. The current text of the exclusion contains a factual error inappropriately limiting the location in the refining process at which recovered oil can be inserted. The result of this error is to restrict legitimate recycling of recovered oil. The proposed correction also in fact reflects the result EPA initially intended, which was to condition the

exclusion of recovered oil on that oil being reinserted into the petroleum refining process at a point where that process removes or will remove contaminants.

In the final rules Section of today's Federal Register, EPA is promulgating this amendment as a final rule without prior proposal because EPA views this as a noncontroversial action which corrects an unintended mistake, and so anticipates no adverse comments. A detailed rationale for the amendment is set forth in the final rule. If no adverse comments are received in response to this proposal, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, EPA will withdraw the final rule and all public comments received will be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action.

DATES: Comments on this proposed rule must be received on or before April 24, 1996, and notice of intent to file adverse comments must be received on or before April 9, 1996. An adverse comment will be considered to be any comment substantively criticizing the proposal on a basis not already provided to EPA in comment.

ADDRESSES: Comments and materials supporting this rulemaking are contained in Public Docket No. F–96–SW2P-FFFFF and are located in the EPA RCRA docket, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA. The docket is open from 9:00 to 4:00, Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling (703) 603–9230. The public may copy a maximum of 100 pages from any one regulatory docket at no cost. Additional copies cost § .15 per page. Persons wishing to notify EPA of their intent to submit adverse comments on this action should contact Steven Silverman, Office of General Counsel (2366), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Steven Silverman, (202) 260–7716, Office of General Counsel at the above address.

SUPPLEMENTARY INFORMATION:

Outline of Today's Action

I. Authority
II. Background
III. Additional Information
IV. Regulatory Requirements
A. Executive Order No. 12866
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
D. Unfunded Mandates Reform Act

I. Authority

These regulations are being proposed under the authority of Sections 2002 and 3001 *et seq.* of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6912 and 6921 *et seq.*

II. Background

As set out in detail in the related direct final rule, EPA is proposing to correct an error in the text of a regulatory exclusion (found at 261.4(a)(12)), regarding the location in a petroleum refining process at which recovered oil can be inserted in order to be excluded from the authority of RCRA subtitle C. The test for point of insertion should be at or before any point in the process that removes contaminants from recovered oil.[1] The current regulatory text limiting insertion to locations before distillation and catalytic cracking is too restrictive because there are points in the petroleum process downstream of these unit operations (such as fractionation) which remove contaminants. The current terms of the exclusion impede legitimate recycling of recovered oil without providing any corresponding environmental benefit, and moreover are based on a factual error. Accordingly, EPA believes the rule should be amended.

III. Additional Information

For additional information, see the corresponding direct final rule published in the rules section of this Federal Register.

IV. Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

(1) have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this amendment to the final rule is not a ''significant regulatory action'' under the terms of the Executive Order and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–602, requires that Federal agencies examine the impacts of their regulations on ''small entities''. If a rulemaking will have a significant impact on a substantial number of small entities, agencies must consider regulatory alternatives that minimize economic impact.

EPA believes that this amendment will have negligible impact on any small entity because it expands the terms of an exclusion from regulation. In addition, the underlying rule itself was deregulatory and so did not have significant adverse economic impact on small entities. See 59 FR at 38545. Therefore, the Administrator certifies pursuant to 5 U.S.C. 601 *et seq.*, that this rule will not have a significant impact on a substantial number of small entities because this amendment reduces the scope of the RCRA subtitle C regulatory program.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, EPA must consider the paperwork burden imposed by any information collection request in a proposed or final rule. This rule will not impose any new information collection requirements.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When a written statement is needed for an EPA rule, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory

[1] The issue of whether this should include insertion into petroleum cokers is being addressed in a separate rulemaking proceeding. 60 FR 57747 (November 20, 1995).

alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector because it imposes no enforceable duties on any of these governmental entities or the private sector. The rule merely corrects a factual error in the regulatory text of the regulatory definition of solid waste. In any event, EPA has determined that this rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. Similarly, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Solid Waste, Petroleum, Recycling.

Dated: March 19, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912 (a), 6921, 6922 and 6938.

2. Section 261.4 in amended by revising paragraph (a)(12) to read as follows:

§ 261.4 Exclusions.

(a) * * *

(12) Recovered oil from petroleum refining, exploration and production, and from transportation incident thereto, which is to be inserted into the petroleum refining process (SIC Code 2911) at or before a point (other than direct insertion into a coker) where contaminants are removed. This exclusion applies to recovered oil stored or transported prior to insertion, except that the oil must not be stored in a manner involving placement on the land, and must not be accumulated speculatively, before being so recycled. Recovered oil is oil that has been reclaimed from secondary materials (such as wastewater) generated from normal petroleum refining, exploration and production, and transportation practices. Recovered oil includes oil that is recovered from refinery wastewater collection and treatment systems, oil recovered from oil and gas drilling operations, and oil recovered from wastes removed from crude oil storage tanks. Recovered oil does not include (among other things) oil-bearing hazardous waste listed in 40 CFR part 261 D (e.g., K048–K052, F037, F038). However, oil recovered from such wastes may be considered recovered oil. Recovered oil also does not include used oil as defined in 40 CFR 279.1.

* * * * *

[FR Doc. 96–7276 Filed 3–25–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 300

[FRL–5445–8]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Waste Disposal Engineering Inc. site from the national priorities list; request for comments.

SUMMARY: The United States Environmental Protection Agency (U.S. EPA) Region 5 announces its intent to delete the Waste Disposal Engineering Inc. (Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which U.S. EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. This action is being taken by U.S. EPA because it has been determined that Responsible Parties and the State of Minnesota have implemented all appropriate response actions required. U.S. EPA, in consultation with the State of Minnesota, have also determined that no further response is appropriate. Although full compliance with off-site surface water and ground water standards has not been demonstrated as yet due to past interruptions in ground water remediation, the State of Minnesota has assumed the legal obligation to carry out the response action duties, including but not limited to operation and maintenance of the remedy and attaining the response action objectives and cleanup standards. A determination of compliance with the off-site surface water and ground water standards will be demonstrated by the State after a longer period of operation and maintenance of the remedy. Moreover, U.S. EPA and the State have determined that remedial activities conducted at the Site to date are and will continue to be protective of public health, welfare, and the environment.

DATES: Comments concerning the proposed deletion of the Site from the NPL may be submitted on or before April 25, 1996.

ADDRESSES: Comments may be mailed to Gladys Beard, Associate Remedial Project Manager, Office of Superfund, U.S. EPA, Region 5, 77 W. Jackson Blvd. (SR–6J), Chicago, IL 60604. Comprehensive information on the site is available at U.S. EPA's Region 5 office and at the local information repository located at: Anoka County Community Health and Environmental Service, Anoka County Government Center, Rm. 360, 2100 3th Ave., Anoka, MN 55303 and Andover City Hall, 1685 Crosstown Blvd. Andover, MN 55304. Requests for comprehensive copies of documents should be directed formally to the Region 5 Docket Office. The address and phone number for the Regional Docket Officer is Jan Pfundheller (H–7J), U.S. EPA, Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

FOR FURTHER INFORMATION CONTACT: Lawrence Schmitt, Remedial Project Manager at (312) 353–6565, Gladys Beard (SR–6J), Associate Remedial Project Manager, Office of Superfund, U.S. EPA, Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–7253 or Susan Pastor (P–19J), Office of

Public Affairs, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–1325.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The U.S. Environmental Protection Agency (EPA) Region 5 announces its intent to delete the Waste Disposal Engineering Inc. Site from the National Priorities List (NPL), which constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and requests comments on the proposed deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund). Pursuant to Section 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if the conditions at the site warrant such action.

The U.S. EPA will accept comments on this proposal for thirty (30) days after publication of this notice in the Federal Register.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the history of this site and explains how the site meets the deletion criteria.

Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Furthermore, deletion from the NPL does not in any way alter U.S. EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist in Agency management.

II. NPL Deletion Criteria

The NCP establishes the criteria the Agency uses to delete Sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, U.S. EPA will consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

(iii) The Remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

III. Deletion Procedures

Upon determination that at least one of the criteria described in 300.425(e) has been met, U.S. EPA may formally begin deletion procedures once the State has concurred. This Federal Register notice, and a concurrent notice in the local newspaper in the vicinity of the Site, announce the initiation of a 30-day comment period. The public is asked to comment on U.S. EPA's intention to delete the Site from the NPL. All critical documents needed to evaluate U.S. EPA's decision are included in the information repository and the deletion docket.

Upon completion of the public comment period, if necessary, the U.S. EPA Regional Office will prepare a Responsiveness Summary to evaluate and address comments that were received. The public is welcome to contact the U.S. EPA Region 5 Office to obtain a copy of this responsiveness summary, if one is prepared. If U.S. EPA then determines the deletion from the NPL is appropriate, final notice of deletion will be published in the Federal Register.

IV. Basis for Intended Site Deletion

The Waste Disposal Engineering, Inc., Site occupies approximately 114 acres in the City of Andover, Minnesota. Andover has a population of approximately 9000 and is located 20 miles north of Minneapolis/St. Paul. Land uses in the vicinity of the site include agricultural, commercial, and residential, with several subdivisions and a stream bordering directly on the site. Some area residents rely on local ground water as a drinking water supply.

The site operated as an open dump from 1963 to 1971, and as a landfill from 1971 until 1983. Approximately 2.5 million cubic yards of solid municipal and industrial wastes and 3 million gallons of liquid industrial wastes were deposited at the site during this time. The site was proposed for the NPL July 16, 1982. The listing was finalized on September 8, 1983, Federal Register number 175, volume number 48 and Page number 40658–40682.

A Remedial Investigation/Feasibility Study was conducted at the site from 1984 through 1987. Contaminants of concern identified at the site include a number of volatile organic compounds in ground water, including 1,1,1-trichloroethane, trichloroethene, and vinyl chloride, at concentrations well above Maximum Contaminant Levels. The site posed potential threats to human health and the environment through direct contact with wastes, soils, and leachate seeps; ingestion of ground or surface water impacted by the site; and possible off-site migration of landfill gas containing hazardous constituents.

On December 31, 1987, the Regional Administrator signed a Record of Decision (ROD) selecting the following remedy:

1. A multilayer soil cap;
2. A ground water containment (extraction and treatment) system;
3. A slurry wall/non-aqueous phase layer control system for a portion of the site;
4. Wetlands replacement;
5. A monitoring program for ground water, surface water, and landfill gas;
6. An operation and maintenance program; and
7. Institutional controls.

After attempts at negotiating a consent decree with the PRPs failed, U.S. EPA issued a CERCLA Section 106 Unilateral Administrative Order for Remedial Design/Remedial Action (RD/RA) to 28 PRPs on August 23, 1991. The PRPs agreed to implement the Order and completed the RD for Operable Unit (OU) 1, the ground water containment system, in October 1992. OU1 Construction was initiated in October 1992 and completed in September 1993. The RD for OU2, the multilayer cap, was completed in December 1992, with construction completed in August 1994. The State provided oversight of all RD/RA activities under a cooperative agreement with U.S. EPA. U.S. EPA and the State conducted a final inspection of the site on August 9, 1994.

After the final inspection was completed, the PRPs were required to discontinue operation of the ground water containment system for several months due to difficulties in meeting permit requirements for the discharge of the ground water to a sanitary sewer. The ground water exhibited a low flash point, creating the hazard of fire or explosion in the sewer, and the PRPs concluded that the presence of landfill gas in the ground water was responsible. U.S. EPA approved the PRP's proposal to construct an air stripping system for the extracted ground water in March 1995 and the system was completed in June 1995.

The ground water containment system has operated without interruption since June 1995, and no further construction is anticipated. U.S. EPA approved the Remedial Action Report submitted by the PRPs and issued the Certification of Completion of Remedial Construction required under the Order to the PRPs on August 10, 1995. U.S. EPA has also approved the Operation and Maintenance Plan and, as a result, only routine operating, maintenance, and monitoring are presently required.

Activities at the site were consistent with the ROD, and work plans were issued to contractors for design and construction of the RA, including sampling and analysis. The RD Report, including a Quality Assurance Project Plan, incorporated all U.S. EPA and State quality assurance and quality control (QA/QC) procedures and protocol. U.S. EPA analytical methods were used for all validation and monitoring samples during remedial action activities.

The QA/QC program utilized throughout this remedial action was rigorous and in conformance with U.S. EPA and State standards; therefore U.S. EPA and the State determined that all analytical results are accurate to the degree needed to assure satisfactory execution of the remedial action, and consistent with the ROD and RD plans and specifications.

Since 1983 the MPCA and the U.S. EPA have been involved in numerous community relations activities associated with the Waste Disposal Engineering Site. Numerous fact sheets and news releases were issued throughout the remedial investigation/feasibility study (RI/FS). Public meetings were held at the beginning of the project on the remedial investigation report and on the proposed remedy. The City of Andover and Anoka County officials were invited to participate in the discussions.

On September 3, 1987, the MPCA issued a news release on the proposed remedy and the public meeting. On September 8, 1987, U.S. EPA sponsored an ad in the Minneapolis daily paper announcing the beginning of the public comment period. On September 14, 1987, a public meeting was held in the Andover City Hall. On September 29, 1987, the public comment period was closed. On March 17, 1993, an Environmental News Release announced the operation schedule of the cleanup at the site.

All the components of the remedy have been fully implemented. On November 27, 1995, the site was issued a Notice of Compliance (NOC) from the State under the Minnesota Landfill Cleanup Law. The State has now assumed full responsibility for the remedy at this site, including achieving all cleanup levels for the remedy. Compliance with off-site surface water and ground water cleanup levels must still be demonstrated. U.S. EPA will proceed in deleting the site from the NPL.

EPA, with concurrence from the State of Minnesota, has determined that Responsible Parties and the State of Minnesota have implemented all appropriate response actions required at the Waste Disposal Engineering Inc. Superfund Site, and that no further CERCLA response is appropriate in order to provide protection of human health and the environment. Therefore, EPA proposes to delete the site from the NPL.

Dated: March 11, 1996.

David A. Ullrich,

Acting Regional Administrator, U.S. EPA, Region V.

[FR Doc. 96–7163 Filed 3–25–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 20 and 24

[WT Docket No. 96–59; GN Docket No. 90–314; FCC 96–119]

Broadband Personal Communications Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission has adopted a Notice of Proposed Rule Making (''*Notice*'') that proposes to resolve a number of issues relevant to the award of licenses for the broadband Personal Communications Services (''PCS'') D, E, and F blocks. The *Notice* begins the process of supplementing the record supporting the gender- and race-based competitive bidding rules in the wake of *Adarand Constructors, Inc.* v. *Pena,* but it also tentatively concludes that the Commission should not delay auctioning the remaining broadband PCS frequency blocks long enough to complete that process. Accordingly, the *Notice* proposes to modify the F block auction rules to make them gender- and race-neutral. The *Notice* also seeks comment on several other matters relating to designated entities and entrepreneurs, including the definitions of small business and rural telephone company, whether to extend installment payment plans to small businesses bidding on the D and E blocks, adjustments to the payment plans available to small businesses bidding on the D and E blocks, and adjustments to the benefits provided to entrepreneurs in the F block rules that might be warranted in light of the fact that 10 MHz licenses are expected to have lower values than the 30 MHz C block licenses. In addition, the *Notice* proposes changes to the F block license transfer restrictions.

The *Notice* also proposes to resolve the question whether, in light of *Cincinnati Bell Telephone Co.* v. *FCC,* the Commission should for all broadband PCS licensees, retain or relax the cellular/PCS cross-ownership rule and the attribution rules for cellular licensees interested in acquiring broadband PCS licenses. In addition, the *Notice* proposes to amend the ownership information disclosure requirements for broadband PCS auction applicants, and proposes to auction the D, E, and F block licenses in concurrent auctions.

This *Notice* contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding.

DATES: Comments must be submitted on or before April 15, 1996; reply comments must be submitted on or before April 25, 1996. Written comments by the public on the proposed and/or modified information collections are due April 15, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before May 28, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. In addition to filing comments with the Secretary, a copy of any comments on information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, D.C. 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Mark Bollinger, Wireless

Telecommunications Bureau, (202) 418–0660. For additional information concerning the information collections contained in this *Notice,* contact Dorothy Conway at (202) 418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making in WT Docket No. 96–59; GN Docket No. 90–314; FCC 96–119, adopted March 20, 1996 and released March 20, 1996. The complete text of the Notice of Proposed Rule Making is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

This *Notice* contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this *Notice,* as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13. Public and agency comments are due at the same time as other comments on this *Notice;* OMB notification of action is due 60 days from date of publication of this *Notice* in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: N/A.

Title: Amendment of Part 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap; Amendment of the Commission's Cellular PCS Cross-Ownership Rule.

Form No.: Form 175 and Form 600.

Type of Review: New collection.

Respondents: Business or other for-profit; individuals or households; not-for-profit institutions; and state, local and tribal governments.

Number of Respondents: 6,000.

Estimated Time Per Response: 13 hours.

Total Annual Burden: 77,817 hours.

Estimated costs per respondent: 2,848 dollars.

Needs and Uses: The auction rules require broadband PCS applicants for the D, E, and F blocks to submit (1) ownership information, (2) terms of joint bidding agreements, (3) net asset (F block only) and gross revenues calculations, and (4) evidence of environmental impact. Furthermore, in case a licensee defaults or loses its license, the Commission retains the discretion to re-auction such licenses. If licenses are re-auctioned, the new license winners would be required at the close of the re-auction to comply with the same disclosure requirements explained above.

The information collected will be used by the Commission to determine whether the applicant is legally, technically, and financially qualified to bid in the broadband PCS auctions and hold a broadband PCS license. Without such information the Commission could not determine whether to issue the license to the successful applicant and therefore fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended.

SYNOPSIS OF THE NOTICE OF PROPOSED RULE MAKING

I. Introduction

In this *Notice,* the Commission seeks comment on a range of issues pertaining to the competitive bidding and ownership rules for the D, E, and F frequency blocks of the Personal Communications Services in the 2 GHz band (''broadband PCS''), and the Commission proposes modifications to these rules. A number of the issues the Commission addresses relate to the treatment of designated entities, *i.e.,* small businesses, rural telephone companies, and businesses owned by members of minority groups and women. In addition, on remand from the U.S. Circuit Court of Appeals for the Sixth Circuit, the Commission reexamines certain rules governing cellular licensees' ownership of broadband PCS licenses in all frequency bands.

II. Proposals

A. Treatment of Designated Entities

1. Meeting the Adarand Standard

2. In the *Competitive Bidding Fifth Report and Order,* 59 Fed Reg 37566 (July 22, 1994) the Commission adopted gender- and race-based provisions as part of the F block rules to encourage the participation of women- and minority-owned businesses in the provision of PCS. The standard of review applied to federal programs designed to enhance opportunities for racial minorities at the time the F block rules were adopted was an intermediate scrutiny standard.

3. In *Adarand v. Peña,* the Supreme Court invalidated the intermediate scrutiny standard for federal race-based programs. The Court held that all racial classifications, imposed by whatever federal, state or local government actor, must be analyzed by a reviewing court under strict scrutiny. In other words, such classifications are constitutional only if they are narrowly tailored to further a compelling governmental interest. Moreover, as the Court made clear in *Adarand,* a strict scrutiny standard of review will be applied even if the racial classifications are well motivated or ''benign.''

4. Application of the two-prong strict scrutiny standard of review to provisions designed to encourage minority participation in PCS requires the Commission to show (1) that a compelling governmental interest exists for taking race into account in adopting such provisions, and (2) that the provisions in question are narrowly tailored to further the compelling governmental interest established by the record and findings. *Richmond* v. *J.A. Croson Co.,* and other cases provide the Commission with some indications of the type of record it might be necessary to develop in order to meet the strict scrutiny standard.

5. In *Croson,* the Court held that remedying past discrimination constitutes a compelling interest, whether the discrimination was committed by the government or by private actors within its jurisdiction. Other courts have also held remedial measures—those intended to compensate for past discrimination—to be compelling governmental interests. In *Croson,* however, the Court makes clear that an interest in remedying general societal discrimination could not be considered compelling because a ''generalized assertion'' of past discrimination ''has no logical stopping point'' and would support unconstrained uses of racial classifications. Whether other objectives for race-based measures rise to the level of a compelling governmental interest is unclear. However, in a plurality opinion issued before *Adarand,* the Supreme Court indicated that non-remedial measures aimed at fostering ethnic diversity could satisfy the compelling interest requirement of strict scrutiny.

6. The Supreme Court in *Croson* noted the high standard of evidence required of the government to establish

a compelling interest. It stated that the government must demonstrate a ''strong basis in evidence for its conclusion that remedial action was necessary'' and that such evidence should approach ''a prima facie case of a constitutional or statutory violation of the rights of minorities.'' Other courts, in cases decided after *Croson*, have held that statistical evidence can be probative of discrimination in the remedial setting, and that anecdotal evidence can buttress statistical evidence.

7. As indicated above, even if a compelling governmental interest is established, the second prong of the strict scrutiny test, narrow tailoring, must also be shown. This requirement is intended to ensure ''that the means chosen 'fit' [the] compelling goal so closely that there is little or no possibility that the motive for the classification was illegitimate racial prejudice or stereotype.'' Different factors have been used by courts to determine, under a strict scrutiny standard, whether a program is narrowly tailored. These include: (1) whether race-neutral measures were considered before adopting race-conscious measures; (2) the scope of the program and whether it contains a waiver mechanism that facilitates narrowing of that scope; (3) the comparison of any numerical target to the number of qualified minorities in the relevant sector; (4) the duration of the program and whether it is subject to periodic review; (5) the manner in which race is considered; and (6) the degree and type of burden on non-minorities.

8. An intermediate scrutiny standard of review currently applies to gender-based measures. Under this standard, a gender-based provision is constitutional if it serves an important governmental objective and is substantially related to achievement of that objective. The Supreme Court has not addressed constitutional challenges to federal gender-based programs since *Adarand*. However, the Court's refusal in *Adarand* to apply a less strict standard to benign race-based classifications than that applied to ''invidious'' race-based classifications suggests that the same standard should be applied to benign and invidious gender-based classifications.

9. In the *Competitive Bidding Sixth Report and Order*, 60 FR 37786 (July 21, 1995), in which it eliminated the race- and gender-based provisions in the C block rules, the Commission expressed its concern that the record would not adequately support the race- and gender-based provisions in the C block competitive bidding rules under a strict scrutiny standard of review. The evidence supporting the gender- and race-based provisions cited in the *Competitive Bidding Fifth Report and Order* primarily shows broad discrimination against racial groups and women by lenders and underrepresentation of these groups as owners and employees in the communications industry. Similar evidence has been submitted to the Commission since that time, including evidence supporting a petition for reconsideration of the *Competitive Bidding Sixth Report and Order.*

10. The Commission continues to believe that this evidence is insufficient to demonstrate a compelling interest under the strict scrutiny standard to support the race-based provisions of the F block because it reflects primarily generalized assertions of discrimination. *Adarand* and *Croson* make clear that only a record of discrimination against a particular racial group would support remedial measures designed to help that group. Therefore, the Commission believes that a record of discrimination against minorities in general is not sufficient. Specific evidence of discrimination against particular racial groups would be required to support a rule for any group. Commission Rules define minority group members to include Blacks, Hispanics, American Indians, Alaskan Natives, Asians, and Pacific Islanders. Although the Commission has some general evidence of discrimination against certain racial groups, none of the evidence it has appears to satisfy strict scrutiny.

11. The Commission notes too that last year, the D.C. Circuit Court of Appeals stayed the C block auction in response to a constitutional equal protection challenge against women- and minority-based provisions, even though an intermediate level standard of review applied. Thus, the Commission tentatively concludes that the present record in support of race-based F block provisions is insufficient to satisfy strict scrutiny. The Commission seeks comment on this tentative conclusion. The Commission also requests comment on whether the F block provisions promote a compelling governmental interest and, more particularly, whether compensating for discrimination in lending practices and in practices in the communications industry constitutes such an interest. The Commission also asks interested parties to comment on nonremedial objectives that could be furthered by the minority-based provisions of the F block rules and whether they could be considered compelling governmental interests, such as increased diversity in ownership and employment in the communications industry or increased industry competition. In commenting, the Commission asks parties to submit statistical data, personal accounts, studies, or any other data relevant to the entry of specific racial groups into the field of telecommunications. Examples of relevant evidence could include discrimination against minorities trying to obtain FCC licenses for auctioned or non-auctioned spectrum; discrimination against minorities seeking positions of ownership or employment in communications or related businesses; discrimination against minorities attempting to obtain capital to start up or expand a telecommunications enterprise, including terms and conditions; and discrimination against minorities operating telecommunications businesses, including treatment by vendors, FCC licensees, and suppliers.

12. The Commission also asks those parties who conclude that the race-based provisions serve a compelling governmental interest to comment on whether the provisions are narrowly tailored to serve that interest. Are these provisions sufficiently narrow in scope? Do they unduly burden non-minorities? Would race-neutral measures further the same interests and achieve the same objectives as race-conscious measures?

13. In addition, the Commission also tentatively concludes that the present record in support of the gender-based F block rules may be insufficient to satisfy intermediate scrutiny. The Commission seeks comment on this tentative conclusion. The Commission also seeks comment on whether there are remedial or nonremedial goals that would satisfy the ''important governmental objective'' requirement of the intermediate scrutiny standard. Are the gender-based F block rules ''substantially related'' to the achievement of such objectives? Just as it requested for the F block race-based provisions, the Commission asks parties to submit statistical data, personal accounts studies or any other data relevant to the entry of women into the field of telecommunications.

14. The Commission also is interested in supplementing the current record to support race- and gender-based provisions in other rules. In this regard, the Commission plans shortly to issue a Notice of Inquiry that requests evidence of current and past discrimination experienced by small businesses and businesses owned by women and minorities or by individual women and minorities. The record outlined in response to this Notice will also be incorporated into that Docket.

15. The Commission undertakes this effort to support the auction rules because it is committed to fulfilling the Congressional mandate to provide opportunities for women- and minority-owned businesses through the competitive bidding process. The Commission believes, however, that marshaling sufficient evidence to satisfy the strict scrutiny standard of review now applicable to federal race-based programs may be a time-consuming process, and it is mindful that it may not fulfill its other obligations under Section 309(j) if it delayed the award of F block licenses until that process is complete.

16. The Commission notes that some representatives of the telecommunications industry have voiced a need to have the D, E, and F block licenses awarded quickly. With the completion of the C block auction, the Commission will have neared completion of awarding the 30 MHz A, B, and C block licenses. Any entity with plans to aggregate a 10 MHz F block license with a 30 MHz A, B, or C block PCS license or any cellular or Specialized Mobile Radio (''SMR'') licensee that plans to acquire a 10 MHz license for use in its service area, the Commission believes, will be interested in swift auctioning of D, E, and F block licenses. The Commission also believes that entities that were unable to win licenses in the previous PCS auctions may be interested in bidding on the D, E, and F blocks, and that it will be important to these entities to acquire licenses quickly so that they can compete at the earliest point possible with other providers of Commercial Mobile Radio Services (''CMRS''), and with wireline service providers. Further, the Commission believes that both Congress and consumers expect it to promote the rapid development of PCS. Balancing its obligation to provide opportunities for women- and minority-owned businesses to participate in spectrum-based services against its statutory duties to facilitate the rapid delivery of new services to the American consumer and promote efficient use of the spectrum, the Commission tentatively concludes that it should not delay the F block auction for the amount of time it would take to adduce sufficient evidence to support the race- and gender-based F block provisions. While the Commission could proceed with the F block auction under the current rules, it tentatively concludes that this course of action would not serve the public interest because it may likely result in litigation that would delay the auction, the dissemination of additional broadband PCS licenses, and ultimately the introduction of competition.

17. As a result, the Commission tentatively concludes that if it is unable to gather sufficient evidence to support the race- and gender-based provisions in the instant proceeding, it should eliminate these provisions from the rules and proceed as expeditiously as possible to auction the remaining broadband PCS licenses. The Commission seeks comment on these tentative conclusions.

18. In reaching these tentative conclusions, the Commission notes that of the 255 bidders that qualified to bid in the C block auction, 46 claimed minority-owned business status and 34 claimed women-owned business status. These statistics indicate that even without the women- and minority-owned business specific provisions in the C block rules, women- and minority-owned businesses were able to participate in the auction. However, one could also argue that the presence of race- and gender-based rules before the *Competitive Bidding Sixth Report and Order* encouraged the participation of minorities and women. It may have helped such companies open the door to discussions with investors that persisted even when the rules changed. Indeed, in the *Competitive Bidding Sixth Report and Order,* one of the Commission's primary objectives was to preserve the relationships and deals minority- and women-owned companies had made prior to the rule change. As discussed more fully below, the Commission seeks comment on whether, if it ultimately decides to make the F block rules race- and gender-neutral, it should do so by making these rules conform to the C block rules, or whether other approaches to amending the F block rules would be more appropriate. The Commission also seeks comment on how the Commission can meet its statutory requirement under Section 309(j) to ensure participation by minorities and women in the provision of service, if the rules are changed to be race- and gender-neutral.

a. Control Group Equity Structures

19. To be eligible to participate in the entrepreneurs' block auctions, an applicant, together with its affiliates and persons or entities that hold interests in the applicant, must have gross revenues of less than $125 million in each of the last two years and total assets of less than $500 million. Under the Commission's current rules, the gross revenues and total assets of certain persons or entities holding interests in an applicant will not be considered for purposes of determining eligibility to participate in the F block auction if the applicant utilizes one of two equity structures. Use of either of these equity structures requires the applicant to form a ''control group,'' but one of these options is available only to minority- and women-owned businesses.

20. The first equity structure option, the *Control Group Minimum 25 Percent Equity Option,* is available to all applicants for the F block auction. Under this option, the control group must hold at least 25 percent of the applicant's total equity. Of that 25 percent, at least 15 percent must be held by ''qualifying investors.'' The remaining ten percent may be held by qualifying investors, certain institutional investors, non-controlling existing investors in any preexisting entity that is a member of the control group, or individuals that are members of the applicant's management. In addition, members of the control group must have *de facto* control of the control group and of the applicant, and hold at least 50.1 percent of the voting stock or all general partnership interests. If these requirements are met, the remaining 75 percent of the applicant's equity may be held by other non-controlling investors, and the gross revenues and total assets of any such investor will not be attributed to the applicant provided that the investor holds no more than 25 percent of the total equity of the applicant.

21. The second equity structure option, the *Control Group Minimum 50.1 Percent Equity Option,* is currently available only to minority- or women-owned applicants for the F block auction. Under this option, the control group must own at least 50.1 percent of the applicant's total equity. Of that 50.1 percent equity, at least 30 percent must be held by qualifying investors who are members of minority groups or women. The remaining 20.1 percent may be held by qualifying investors, certain institutional investors, non-controlling existing investors in any preexisting entity that is a member of the control group, or individuals who are members of the applicant's management. In addition, members of the control group must hold 50.1 percent of the voting stock or all general partnership interests, and have *de facto* control of both the control group and the applicant. If these requirements are met, the remaining 49.9 percent of the applicant's equity may be held by a single non-controlling investor, and the gross revenues and total assets of any such investor will not be attributed.

22. When the Commission adopted the *Control Group Minimum 50.1*

Percent Equity Option, it determined that making such a mechanism available to minority- and women-owned businesses would help them attract adequate financing. However, in light of the Supreme Court's holding in *Adarand,* the Commission tentatively concludes that, if it determines after reviewing the comments in this proceeding that it still does not have a sufficient record to support offering the 50.1/49.9 percent equity structure only to women- and minority-owned businesses, it should make the *Control Group Minimum 50.1 Percent Equity Option* available to small businesses and entrepreneurs as it did in the C block auction. In other words, if commenters in this proceeding are unable to supply sufficient evidence to meet the applicable standard of review, the Commission proposes to modify the rules to permit all F block applicants to avail themselves of the 50.1/49.9 percent equity structure. The Commission believes that such a rule change, which is identical to a rule change upheld in the C block by the D.C. Circuit, would facilitate the expeditious dissemination of the F block licenses by forestalling the legal challenges based on *Adarand* that would likely result if it moved forward with this rule in its current form. The Commission seeks comment on this proposal. Since this control group option was adopted to help minority- and women-owned businesses, in particular, attract capital, the Commission also seeks comment on whether it needs to extend this provision to all small businesses here.

23. As an alternative to adopting the above rule changes, the Commission could simplify or abandon both control group equity structure options currently offered to F block applicants. Should it, for example, provide that only the gross revenues and assets of controlling principals in the applicant, together with any affiliates of the applicant, be aggregated to determine eligibility? If the Commission were to modify the rules in this way, how should it determine who is a controlling principal? Alternatively, the Commission could aggregate the gross revenues and assets of controlling principals and any investor that has an interest in the applicant that exceeds a certain percentage. For example, the Commission could provide that only the gross revenues of investors with an ownership interest of 25 percent or more in the applicant will be aggregated with the assets of controlling principals. If the Commission were to adopt this modification, what percentage of interest in the applicant should it adopt as the threshold? The Commission seeks comment on these and other options that interested parties might wish to propose.

24. Finally, the Commission asks commenters to discuss whether there is any need to make adjustments to the financial eligibility threshold for the F block auction. Is there a concern, for example, that C block winners will be disqualified from acquiring F block licenses by virtue of the valuation of their C block licenses? Should the Commission simply allow any qualified C block bidder to bid on F block licenses?

b. Affiliation Rules

25. The Commission adopted affiliation rules for identifying all individuals and entities whose gross revenues and assets must be aggregated with those of the applicant to determine whether the applicant exceeds the financial caps for the entrepreneurs' blocks or for small business size status. The affiliation rules identify which individuals or entities will be found to control or be controlled by the applicant or an attributable investor in the applicant by specifying which ownership interests or other criteria will give rise to an affiliation.

26. The Commission adopted two exceptions to the affiliation rules in the broadband PCS C and F block context. Under one exception, applicants affiliated with Indian tribes and Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 *et seq.,* are generally exempted from the affiliation rules for purposes of determining eligibility to participate in bidding on C and F block licenses and to qualify as a small business. Under the second exception, as originally adopted, the gross revenues and assets of affiliates controlled by minority investors who are members of the applicant's control group are not attributed to the applicant for purposes of determining compliance with the eligibility standards for participation in the entrepreneurs' block auctions.

27. In the *Further Notice of Proposed Rule Making,* 60 FR 34201 (June 30, 1995), the Commission proposed elimination of the exception to the affiliation rules pertaining to minority investors for purposes of the C block auction. This exception was intended to permit minority investors who control other concerns to be members of an applicant's control group and to bring their management skills and financial resources to bear in its operation without the assets and revenues of those other concerns being counted as part of the applicant's total assets and revenues. The Commission further anticipated that such an exception would permit minority applicants to pool their resources with other minority-owned businesses and draw on the expertise of those who have faced similar barriers to raising capital in the past. The Commission tentatively concluded that it would be imprudent to extend such an exception to all entrepreneurs because to do so would frustrate the Commission's goals in establishing the entrepreneurs' blocks—namely, to ensure that broadband PCS licenses will be disseminated among a wide variety of applicants and to exclude large telecommunications companies from bidding on such blocks.

28. In the *Competitive Bidding Sixth Report and Order,* however, the Commission declined to eliminate the exception and adopted a modification to the minority affiliation rule for the C block which was suggested by commenters. The modified rule, 47 CFR § 24.720(l)(11)(ii), allows all small business applicants to exclude any affiliates who would otherwise qualify as entrepreneurs by having gross revenues under $125 million and total assets under $500 million and whose total assets and gross revenues, when considered on a cumulative basis and aggregated with each other, do not exceed these amounts. This rule change in the C block was affirmed by the D.C. Circuit Court of Appeals.

29. The Commission seeks comment on whether, if it determines that the record is insufficient to support an exception to the affiliation rule based on race, it should amend the affiliation rule for the F block to eliminate the exception pertaining to minority investors, as was originally proposed for the C block, or whether it should adopt the C block's modified exception. It has been alleged that the modification of the exception for minority investors for purposes of the C block auction could lead to abuse. The Commission believes that its experience with the C block auction may show whether this rule has had its intended effect of allowing small businesses to pool their resources to bid on capital-intensive services and draw on the expertise of those who have started small businesses. If information from the C block auction is relevant to whether the Commission should amend the rule, it proposes to incorporate it here. The Commission also seeks comment on whether this modified minority investors exception would serve the public interest given the fact that F block licenses are smaller than C

block licenses and are expected to have lower values.

30. The Commission does not propose to eliminate the affiliation exception for Indian tribes and Alaska Regional or Village Corporations. It tentatively concludes that the ''Indian Commerce Clause'' of the United States Constitution provides an independent basis for this exception that is not implicated by the holding in *Adarand*. The Commission requests comment on this tentative conclusion.

c. Installment Payments

31. As a general matter, entrepreneurs' block licensees are eligible for installment payment plans that afford them the opportunity to pay for their licenses over a period of time at favorable interest rates, rather than pay for the licenses in full at the time of grant.

32. Five different installment payment plans are currently available to F block applicants under Section 24.716 of the Commission's Rules. The first installment payment plan, which is available to entities with gross revenues in excess of $75 million, allows them to pay interest based on the ten-year U.S. Treasury rate plus 3.5 percent, with payment of principal and interest amortized over the term of the license. The second installment payment plan, which is available to entities with gross revenues between $40 and $75 million, provides for the payment of interest equal to the ten-year U.S. Treasury rate plus 2.5 percent. Entities eligible for this plan make interest-only payments for one year, with the principal and interest amortized over the remaining nine years of the license term.

33. The third installment payment plan is available only to entities that qualify as a small business or consortium of small businesses. This plan provides for the payment of interest at the ten-year U.S. Treasury rate plus 2.5 percent, but allows eligible entities to make interest-only payments for two years, with principal and interest amortized over the remaining eight years of the license term.

34. The fourth plan provides for interest-only payments for three years and payments of principal and interest over the remaining seven years of the license term and is only available to businesses owned by members of minority groups or women. The final and most favorable installment payment plan provides for interest-only payments for six years and payments of principal and interest amortized over the remaining four years of the license term. This plan is available only to small businesses owned by members of minority groups or women.

35. In the event the Commission finds after reviewing the comments in this proceeding that the record is insufficient to sustain the race- and gender-based provisions of the F block rules under the appropriate standard of review, the Commission proposes to modify Section 24.716 to eliminate the special provisions that are tied to an applicant's status as a minority- or women-owned business. The Commission seeks comment on whether it should provide for three installment payment plans based solely on financial size, as it did for the C block. Under this approach, the first two installment payments described above—those for eligible bidders with gross revenues exceeding $75 million and with gross revenues between $40 and $75 million—would remain unchanged. The most favorable installment payment plan—set forth in Section 24.716(b)(5) and previously available only to small minority- or women-owned firms—would be made available to all small businesses. Thus, all small businesses would be permitted to pay for their licenses in installments at the ten-year U.S. Treasury rate applicable on the date the license is granted, and would be permitted to make interest-only payments for the first six years, with payments of principal and interest amortized over the remaining four years of the license term. As discussed below, however, the Commission also seeks comment on whether such favorable payment terms are necessary for F block auction winners and, in particular, whether the 6-year interest only period serves the public interest given that the amounts bid for the 10 MHz licenses most likely would be lower than those bid for 30 MHz licenses in the C block.

d. Bidding Credits

36. A bidding credit acts as a discount on the winning bid amount that a bidder actually has to pay for the license. The current F block rules provide for three tiers of bidding credits ranging between 10 percent and 25 percent. Under these rules, a small business is granted a 10 percent bidding credit, a business that is owned by members of minority groups or women is granted a 15 percent bidding credit, and a small business owned by members of minority groups or women is allowed to aggregate the bidding credits for a 25 percent bidding credit.

37. If the Commission finds that they cannot withstand judicial review on the basis of the evidence adduced in this proceeding, it proposes to eliminate the race- and gender-based bidding credits in the F block rules. The Commission believe that this proposed rule change, like the other proposals for making the rules race- and gender-neutral, should allow it and prospective bidders to avoid litigation based on Adarand and thus will permit the auction to proceed without delay. The Commission seeks comment on this proposal. It also seeks comment on whether it should, in place of these bidding credits, extend a single bidding credit to all small businesses as it did for the C block. If the Commission chooses to adopt a single small business bidding credit for the F block, how big should the credit be? Should the Commission retain one of the three bidding credits currently provided—10, 15 or 25 percent—and make it available to all small businesses bidding in the F block? In the alternative, should the Commission offer tiered bidding credits, such as 15 percent for small businesses with aggregate gross revenues under $15 million and 10 percent for businesses with gross revenues between $15 million and $40 million? The Commission tentatively concludes that because the value of 10 MHz licenses may be lower than the value of 30 MHz licenses, a smaller bidding credit than was offered C block bidders may be appropriate for F block bidders. The Commission also tentatively concludes that these lower expected values may attract smaller businesses, thus justifying a tiered bidding credit. The Commission seeks comments on these tentative conclusions.

e. Information Collection

38. If the Commission eliminates the race- and gender-based provisions in the F block rules because it finds after reviewing the comments in this proceeding that it still does not have a record sufficient to withstand the appropriate standard of review, it intends nonetheless to continue to request that applicants provide information regarding minority- or women owned status in their short-form applications. The Commission notes that it has collected such information concerning participants in ongoing auctions, including the C block auction. The Commission believes that continuing to collect such information will assist it in analyzing applicant pools and auction results to determine whether it has promoted substantial participation in auctions by minorities and women, as Congress directed, through the special provisions it propose to make available to small businesses. This information will also assist the Commission in preparing a report to Congress on the participation of designated entities in the auctions

and in the provision of spectrum-based services. In addition, such information will be relevant in developing a supplemental record should the Commission find that special provisions for small businesses prove unsuccessful in encouraging the dissemination of licenses to a wide variety of applicants, including businesses owned by members of minority groups and women. The Commission seeks comment on this information collection proposal.

2. Definitions

a. Small Business

39. The proposal to extend to small businesses certain F block rule provisions previously applicable only to women- and minority-owned businesses highlights the importance of the definition of a small business. The current generic auction rules enable the Commission to establish a small business definition in the context of each particular service. Under the specific rule for the C and F blocks, a ''small business'' is defined as an entity that, together with its affiliates and persons or entities that hold interests in such entity and their affiliates, has average gross revenues that are not more than $40 million for the preceding three years.

40. The Commission requests comment on whether the definition of small business continues to be appropriate. Is a threshold of average gross revenues of not more than $40 million too high or too low for entities bidding on 10 MHz licenses? How does the definition of small business in Section 24.720(b)(1) compare to the definition of small businesses for other services? Does the current service-by-service approach remain valid? In the alternative, would it be feasible to establish an appropriate small business size applicable to all CMRS services? The Commission proposes to keep the current small business definition for the F block—the same definition used for the C block—to allow C block small business licensees to benefit from the small business provisions of the F block. The Commission requests comment on this proposal. However, the Commission is concerned that by using this threshold, C block winners may not be able to acquire F block licenses given the value of their C block licenses. The Commission, therefore, requests comment on whether the value of a C block license should be part of the gross revenues calculation. The Commission also requests comment on whether it should define and adopt rules for very small businesses. If so, what should be the appropriate size standard for very small businesses and why? Instead of or in addition to modifying the small business definition, should the Commission modify or simplify the affiliation rules? The Commission notes that the Small Business Administration recently simplified the definition of ''affiliate'' in its rules.

b. Rural Telephone Company

41. In the *Competitive Bidding Fifth Report and Order,* the Commission established provisions to help rural telephone companies become meaningful participants in the PCS industry and defined a rural telephone company as ''a local exchange carrier having 100,000 or fewer access lines, including all affiliates.'' The impact of this definition was to identify entities that qualified for the partitioning system that the Commission adopted to allow rural telephone companies to obtain broadband PCS licenses that are geographically partitioned from large PCS service areas.

42. The Telecommunications Act of 1996 creates, for the first time, a statutory definition for rural telephone companies. The Commission requests comment on whether Congress intended to define the term rural telephone company used in Section 309(j) or whether it was only meant to define the term as used in new sections of the Communications Act, such as Section 251. In any event, should the Commission change the definition of a rural telephone company to this definition for purposes of the broadband PCS designated entity provisions. The Commission also asks commenters to discuss how adoption of this definition would affect the current rules allowing geographic partitioning of rural areas served by rural telephone companies.

3. Extending Small Business Provisions to the D and E Blocks

43. The rule modifications discussed above would extend greater bidding credits and more favorable installment payment plans to all small business bidders in the F block auction. The D and E blocks are not entrepreneurs' blocks, and current D and E block auction rules do not make special provision for small businesses. Members of the telecommunications industry, however, have expressed a desire for the Commission to extend the small business provisions of the F block auction rules to bidders for D and E block licenses.

44. The Commission requests comment on whether it should extend installment payment plans to small businesses bidding on the D and E blocks. From parties that believe the Commission should extend these provisions to the D and E blocks, the Commission also requests comment on the terms for these provisions for D and E block small businesses. For example, should small businesses bidding in the D and E blocks qualify for installment payments with the same terms as small businesses in the F block, or should D and E block small businesses receive less favorable payment terms? The Commission tentatively concludes that extension of installment payments could result in disseminating licenses in the D and E blocks to a wider variety of applicants in two ways. First, it could increase the chances for all small businesses, including those that are women- or minority-owned and that would have benefited from the F block provisions that it proposes to change, to win a D, E, or F block license. Second, it could increase opportunities for small businesses that are current PCS, cellular, or SMR licensees to obtain 10 MHz-licenses that they could aggregate with their current licenses. The Commission requests comment on this tentative conclusion.

4. Adjusting for Lower Values of 10 MHz Licenses

45. Notwithstanding the Commission's desire to increase opportunities for small businesses, including those that are women- and minority-owned, to acquire PCS licenses, the Commission is aware that winning bids for the D, E, and F block licenses, which authorize the use of 10 MHz, could be lower than those for the 30 MHz A, B, and C block licenses. Accordingly, it asks for comment on whether it should adjust the terms of the installment financing provisions to reflect the lower values of the 10 MHz license. Are the installment payment plans for small businesses too generous in light of the expected lower values of the 10 MHz licenses? In particular, is it in the public interest to offer a 6-year interest-only period for all small business F block licensees?

46. Similarly, the Commission seeks comment on whether the F block rules establishing discounted upfront payments and reduced down payments for entrepreneurs should be adjusted. Upfront payment requirements are designed to ensure that only serious and qualified bidders participate in the Commission's spectrum auctions, and to deter frivolous or insincere bidding. Upfront payments are also required to provide the Commission with a source of funds in the event that it becomes necessary to assess default or bid withdrawal payments. The

Commission's rules currently require participants in the F block auction to submit an upfront payment of $0.015 per MHz per pop (or per bidding unit) for the maximum number of licenses (in terms of bidding units) on which they intend to bid. This differs from the standard upfront payment formula originally set at $0.02 per MHz-pop for broadband PCS services, which was utilized in the A and B block auctions and will be required in the D and E blocks. The 25 percent discount on the upfront payment for the entrepreneurs' block auctions was intended to facilitate the participation of capital-constrained companies and permit them to conserve resources for infrastructure development after winning a license.

47. The Commission requests comment on whether a discounted upfront payment is necessary to encourage the participation of entrepreneurs and designated entities in the F block auction. It also requests comment on whether the discounted upfront payment is sufficient to ensure that only serious and qualified bidders participate in the F block auction. Is the discounted upfront payment amount an adequate measure of a bidder's ability to pay for the licenses it might win and to meet the Commission's build-out requirements? Or, should the Commission increase the required upfront payment to $0.02 per bidding unit or more in order to minimize the possibility of insincere or frivolous bidding and bidder default?

48. The F block rules also discount down payments for winning bidders. The primary purpose of the down payment requirement is to ensure that a winning bidder will be able to pay the full amount of its winning bid. In arriving at an appropriate level for the down payment, the Commission sought to ensure that auction winners would have the necessary financial capabilities to complete payment for the license and to pay for the costs of constructing a system. At the same time, the Commission did not want to require a down payment so onerous as to hinder an applicant's growth and diminish its access to capital. The Commission decided to require winning bidders in broadband PCS auctions (except for those eligible for installment payments in the entrepreneurs' blocks) to supplement their upfront payment with a down payment sufficient to bring their total deposits up to 20 percent of their winning bid(s). For winning bidders in the entrepreneurs' blocks auctions, the Commission agreed to require a reduced down payment of only ten percent of the winning bid. Currently, a winning bidder in the F block auction is required to make a down payment equal to ten percent of its net winning bid, with five percent due within five days of the close of the auction, and the remainder due within five days of the grant of the license.

49. The Commission now requests comment on whether this reduction in the down payment requirement is necessary to facilitate the participation of entrepreneurs and designated entities in providing service to the public as F block licensees. The Commission also requests comment on whether the reduced down payment is sufficient to demonstrate that a winning bidder has the necessary financial capabilities to complete payment for the license and to pay for the costs of constructing a system. Should the Commission increase the required down payment to 20 percent of the winning bid in order to guard against the possibility of bidder default? Would a higher payment hinder growth and access to capital?

5. Rules Regarding the Holding of Licenses

50. In the *Competitive Bidding Fifth Report and Order,* the Commission adopted restrictions on the transfer or assignment of licenses won by bidders in the entrepreneurs' blocks. These restrictions were designed to ensure that licensees did not take unfair advantage of entrepreneurs' block special provisions by immediately assigning or transferring control of their licenses to other entities. The rules prohibit licensees in the entrepreneurs' block from voluntarily assigning or transferring control of their license during the three years after the date of the license grant. Two years thereafter, the licensee is permitted to assign or transfer control of its authorization only to an entity that satisfies the eligibility criteria for the entrepreneurs' blocks.

51. The Commission also adopted specific rules to prevent recipients of bidding credits and installment payment plans from realizing any unjust enrichment that they might gain from transfer or assignment that occurs during the full ten-year license term. With regard to bidding credits, the rules require that if a licensee applies to assign or transfer control of a license to an entity that is not eligible for as high a level of bidding credit, then the difference between the bidding credit obtained by the assigning party and the bidding credit for which the acquiring party would qualify must be paid to the U.S. Treasury as a condition of approval of the transfer or assignment. If a licensee that was awarded installment payments seeks to assign or transfer control of its license during the term of the license to an entity not meeting the applicable eligibility standards, the rules require payment of the remaining principal and any interest accrued through the date of assignment as a condition of approval of the transfer or assignment.

52. The Commission tentatively concludes that, in addition to the changes that it proposes to the F block auction rules, some measure is still needed to discourage speculators or sham bidders in the entrepreneurs' block auction. The Commission also tentatively concludes that if it adopts the proposals to make the F block auction rules race- and gender-neutral, and extend small business provisions to bidders in all three 10 MHz broadband PCS blocks, the current transfer restrictions for F block licensees may be too restrictive. For example, under the proposed changes to the race- and gender-based provisions and the current transfer restriction, a small business cannot transfer its F block license in the first three years and, in the two years thereafter, may only transfer its license to another small business. An entrepreneur F block licensee, however, would be able to transfer its F block license in years four and five to any other entrepreneur, including a small business. Such a result goes farther than to merely discourage speculative bidding in the entrepreneurs' block auction. Therefore, the Commission proposes to amend the holding requirement to let all F block licensees transfer their licenses within the first three years to an entity that qualifies as an entrepreneur. The Commission also proposes to retain the unjust enrichment provisions. It seeks comment on this proposal and its tentative conclusions. It particularly seeks comment on whether entities participating in the C block auction may have had experiences that would influence the Commission's tentative conclusions here.

B. The Cincinnati Bell *Remand*

1. The Cellular/PCS Cross-ownership Rule

53. Under Section 24.204(a), no cellular licensee may be granted a license for more than 10 MHz of broadband PCS spectrum prior to the year 2000 if the grant will result in a significant overlap of the cellular licensee's Cellular Geographic Service Area (''CGSA'') and the PCS service area. After the year 2000, cellular licensees will be allowed to obtain a grant of 15 MHz of PCS spectrum in an area that overlaps significantly with their CGSA. ''Significant overlap'' occurs when ten percent or more of the

population of the PCS service area is contained within the CGSA. Thus, because cellular licenses authorize the use of 25 MHz of spectrum, cellular operators currently are limited to 35 MHz of aggregated cellular and PCS spectrum in any one geographic area.

54. In *Cincinnati Bell,* the Court concluded that the Commission's limitations on cellular operators' eligibility for PCS licenses are arbitrary because the FCC provided little or no support for its assertions that, without such restrictions, cellular providers might engage in anticompetitive practices or exert undue market power. The Court further explained that, while the Commission's stated goal of avoiding excessive concentration of licenses is a permissible objective under the Communications Act, the cellular eligibility rules are, without an economic rationale, an arbitrary solution to this problem. According to the Court, the FCC must supply more factual support for its belief that cellular operators might detrimentally affect the market if they were allowed to obtain licenses for larger amounts of PCS spectrum.

55. In light of the Sixth Circuit's ruling, the Commission seeks comment on whether the PCS/cellular cross-ownership rule should be relaxed or retained. Currently, the Commission's rules contain other spectrum caps that affect applicants for PCS licenses. The broadest limitation on wireless spectrum ownership is the 45 MHz cap on CMRS uses within three radio services: broadband PCS, cellular, and SMR. In addition, all PCS licensees are limited to a total of 40 MHz of spectrum in any one geographic area. This means that an entity may not own PCS licenses for any two or more spectrum blocks that will total more than 40 MHz in the same geographic area. Are there reasons for maintaining the separate 35 MHz spectrum cap on cellular providers' ownership of PCS spectrum in their service area or the 40 MHz PCS spectrum cap? Comments supporting retention of the current rules should provide facts showing that cellular operators will detrimentally affect the market if allowed to obtain immediately 10 MHz or more of PCS spectrum in their geographic service areas. The Commission also seeks comment on whether it should relax and simplify the ownership limitations by eliminating the PCS/cellular ownership limitations and the 40 MHz PCS spectrum cap in favor of the single 45 MHz CMRS spectrum cap. Under such a rule, cellular operators would be permitted to acquire licenses for two 10 MHz blocks of broadband PCS spectrum. The Commission asks commenters to discuss the impact on competition among CMRS providers, including the effect, if any, on the provision of PCS.

2. The 20 Percent Attribution Standard

56. For the purpose of determining whether an entity is a cellular operator and subject to the cellular/PCS cross-ownership rule, the Commission has developed attribution standards. Section 24.204(d)(2)(ii) of the Commission's Rules provides that partnership and other ownership interests and any stock interest amounting to 20 percent or more of the equity, or outstanding stock, or outstanding voting stock of a cellular licensee will be attributable. Thus, any entity owning such a 20 percent interest in a cellular licensee is precluded from obtaining a license for broadband PCS in excess of 10 MHz in a service area that overlaps the cellular licensee's CGSA.

57. Section 24.204(d)(2)(ii) also currently provides for a higher cellular ownership attribution threshold for small businesses, rural telephone companies, and businesses owned by minorities or women than for other entities. If cellular ownership interests are held by such types of businesses, their interests are not attributable until they reach at least 40 percent. Similarly, a cellular ownership interest held by an entity with a non-controlling equity interest in a broadband PCS licensee or applicant owned by minorities or women is attributable only if it reaches 40 percent or more.

58. The Court in *Cincinnati Bell* found the 20 percent cellular attribution standard to be arbitrary on the ground that it does not bear a reasonable relationship to whether a party with a minority interest in a cellular licensee actually has the ability to control that licensee. The Court rejected the FCC's argument that an entity with such an interest in a cellular licensee would have a reduced incentive to compete with the cellular company as a PCS provider, indicating that this argument is unsupported by either statistical data or a general economic theory and stating that the Commission must provide support for such predictive conclusions. In response to the FCC's argument that the Commission needs a bright-line rule to avoid delays in resolving PCS eligibility issues, the Court agreed with those challenging the 20 percent standard that the Commission should have supplied a reasoned basis for its decision not to adopt less restrictive alternatives.

59. The 45 MHz CMRS spectrum aggregation limit, discussed above, includes an attribution rule that governs how ownership interests are measured. Under this rule, partnership and other ownership interests, and any stock interest amounting to 20 percent or more of the equity, or outstanding stock, or outstanding voting stock of a broadband PCS, cellular, or SMR licensee shall be attributed, except that those interests held by small businesses, rural telephone companies, or businesses owned by minorities or women will not be attributed unless they reach a threshold level of 40 percent. Similarly, a CMRS ownership interest held by an entity with a non-controlling equity interest in a broadband PCS licensee or applicant owned by minorities or women is attributable only if it reaches 40 percent or more. The Commission's 20 percent attribution level for the CMRS spectrum cap was chosen to be consistent with the attribution standard for the PCS/cellular cross-ownership rule. The Commission supported this standard with an opinion of the Federal Accounting Standards Board which explicitly states that ownership interests below 20 percent presumptively do not have control and above 20 percent they do unless evidence to the contrary is established.

60. In the *Competitive Bidding Sixth Report and Order,* the cellular/PCS cross-ownership attribution rule and the CMRS spectrum aggregation rules were amended for purposes of C block licenses to eliminate race- and gender-based provisions and make the 40 percent attribution standard applicable only to interests held by a small business or rural telephone company and interests held by an entity with a non-controlling equity interest in a licensee or applicant that is a small business.

61. The Commission seeks comment on whether it should retain the ownership attribution rule for cellular licensees interested in acquiring broadband PCS licenses. The 20 percent attribution rule was fashioned to strike a balance between maximizing competition and allowing cellular entities to bring their expertise to PCS. The Commission did not adopt a rule that required inquiry into whether a party has a controlling interest in a cellular licensee because it believed a bright-line rule would result in faster, less burdensome licensing. However, the Sixth Circuit found that the Commission did not adequately justify this decision. Accordingly, the Commission seeks comment on whether the 20 percent attribution rule should be modified. Should the attribution rule be changed to a controlling interest test? Is there some other bright-line test that

might be used to avoid burdening the licensing process? Should the Commission adopt a single majority shareholder exception? Should the approach depend on whether the Commission modifies the cellular/PCS cross-ownership rule or, in the alternative, eliminates this rule and retains only the 45 MHz CMRS spectrum cap? Should the Commission, in any case, modify the 20 percent attribution standard applicable to the 45 MHz CMRS spectrum cap in light of the Sixth Circuit's opinion regarding this type of standard in connection with the cellular/PCS cross-ownership rule? The Commission notes that the 20 percent attribution standard and the 40 percent exception are the highest ownership attribution rules the Commission has. The new Telecommunications Act, in the definition of ''affiliate'', defines ownership as a 10 percent interest.

62. The Commission proposes to modify the cellular/PCS cross-ownership and CMRS spectrum aggregation limit rules for F block purposes to comply with the requirements of *Adarand*. It proposes to remove the provisions in these rules which increase the cellular attribution threshold to 40 percent on the basis of the race or gender of the holder of the ownership interest or of the broadband PCS applicant in which such holder is an investor. Accordingly, the Commission proposes, for purposes of the F block auction, that the 40 percent cellular attribution threshold of the PCS/cellular cross-ownership rule will continue to apply if the ownership interest is held by a small business or a rural telephone company or if the cellular ownership interest is held by an entity with a non-controlling equity interest in a broadband PCS licensee or applicant that is a small business. Similarly, the Commission proposes, for purposes of the F block auction, that the 40 percent cellular attribution threshold of the CMRS spectrum aggregation limit will continue to apply if the CMRS ownership interest is held by a small business or a rural telephone company (including those owned by minorities or women). These proposed changes mirror modifications that were made to the C block rules in the *Competitive Bidding Sixth Report and Order.* The Commission seeks comment on this proposal.

63. Finally, the Commission notes that the Court in *Cincinnati Bell* did not find Section 24.204(d)(2)(i) of the Commission's Rules to be arbitrary. Under this section, certain ownership interests of five percent or more in broadband PCS licensees and applicants are attributable for purposes of applying the 10 and 15 MHz spectrum limitations and the 40 MHz limit in the same geographic area, discussed above. The Commission does not propose to modify this rule.

C. Ownership Disclosure Provisions

64. The rules provide ''short-form'' (FCC Form 175) and ''long-form'' (FCC Form 600) application procedures for broadband PCS bidders. Short-form applications are submitted prior to the auction by entities seeking to qualify as bidders. Long-form applications are submitted by winning bidders in the auctions to obtain their licenses. The application procedures for broadband PCS require applicants to furnish detailed ownership information in both their short-form and long-form applications.

65. In addition to this information required of all PCS applicants, specific rules require F block applicants to submit more detailed ownership and financial information. An F block applicant must identify its affiliates and provide its gross revenues and total assets. On their short-form applications, all other F block applicants must disclose: (1) the identity of each member of their control group, including the citizenship and gender or minority group classification for each member; (2) the status of each control group member that is an institutional investor and existing investor and/or a member of the applicant's management; (3) the identity of each affiliate of the applicant and each affiliate of individuals in applicant's control group; (4) their gross revenues and total assets. Applicants must demonstrate their gross revenues and total assets using audited financial statements for the most recently completed calendar or fiscal years. Each F block applicant must also certify on its short-form application that it is eligible to bid for and obtain licenses, consistent with the Commission's Rules and, if appropriate, that it is eligible to bid as a designated entity.

66. Winning F block bidders' long-form applications must disclose, separately and in the aggregate, their gross revenues and total assets plus the gross revenues and total assets of their affiliates, their control group members, their attributable investors, and affiliates of their attributable investors. These applicants must also list and summarize all agreements that support their eligibility for an F block license and any investor protection agreements.

67. During the course of previous broadband PCS auctions, it became evident that certain ownership disclosure requirements found in the general PCS competitive bidding rules were burdensome and difficult to administer both at the short-form and long-form stages. For many large corporations, especially investment firms with diverse holdings, the requirements were very burdensome, particularly when they involved calculating indirect ownership interests in outside firms using the multiplier. Moreover, while identifying all businesses in which an attributable stockholder of the applicant held a five percent (or greater) interest generated significant amounts of information, the disclosures identified businesses that had no relation to the services for which licenses were being auctioned. In addition, requiring the submission of partnership agreements proved sensitive because such agreements often contained strategic bidding information and other confidential data. These provisions were waived by the Wireless Telecommunications Bureau for the short-form and long-form filings for PCS blocks A and B and for the short-form application for the C block.

68. In waiving ownership disclosure requirements for the A and B block short-form applications, the Wireless Telecommunications Bureau stated that the purpose of the disclosure rules contained in Section 24.813(a) of the Commission's Rules is ''to allow the Commission to determine who is the real party in interest, to determine compliance with anti-collusion rules and ownership restrictions such as the multiple- and cross-ownership rules and the alien ownership restrictions.'' The Bureau noted that the short-form application requires applicants to certify that they are in compliance with these regulations. The Wireless Telecommunications Bureau concluded that requiring information about all attributable stockholders' other interests does not serve the stated purposes of ownership disclosure. The Bureau also concluded that because partnership agreements often discuss strategic business objectives, submission of them would be detrimental to partnerships. Following the same rationale, the Wireless Telecommunications Bureau waived Section 24.813(a)(1), 24.813(a)(2) and 24.813(a)(4) of the rules for the A and B block long-form and the C block short-form applications.

69. At the short-form application stage in the C block PCS auction, the Commission received 36 waiver petitions from applicants requesting that they be permitted to demonstrate their gross revenues and total assets using methods other than audited financial statements. These waiver requests indicate that many smaller businesses do not use audited financial statements

in the normal course of business. Applicants in the C block auction also requested, and were granted, a waiver of the requirement that when financial information is supported by audited financial statements based on fiscal years, statements for the three most recent years must be used. Applicants were permitted to file statements for fiscal years 1991, 1992, and 1993, instead.

70. In light of its experience to date, the Commission proposes to amend Section 24.813(a)(1) and Section 24.813(a)(2) of the rules to limit the information disclosure requirement with respect to outside ownership interests of applicants' attributable stockholders. More specifically, it proposes to require only the disclosure of attributable stockholders' direct, attributable ownership in other businesses holding or applying for CMRS or Private Mobile Radio Services (''PMRS'') licenses. Moreover, the Commission proposes to amend Section 24.813(a)(4) to delete the requirement that partnerships file a signed and dated copy of the partnership agreement with their short-form and long-form applications. The Commission requests comment on these proposed changes. The Commission also seeks comment on whether it should further reduce the scope of information required by the general PCS rules at either the short-form or long-form filing stages. In addition, it requests comment on the alternative approach of requiring applicants to make their ownership documentation available upon request to other applicants during or after the auction. The Commission also requests comment on whether the proposed changes would provide bidders with sufficient information on their competitors in the auction.

71. The number of waivers requesting permission to demonstrate gross revenues and total assets without audited financial statements in the C block auction leads the Commission to propose changes to Section 24.720(f) and Section 24.720(g) of its rules. The Commission proposes to permit each applicant that does not otherwise use audited financial statements to provide a certification from its chief financial officer that the gross revenue and total asset figures that it provides in its short-form and long-form applications are true, full, and accurate; and that the applicant does not have the audited financial statements that are otherwise required under the rules. The Commission believes that such a modification to the rules would be the most effective way to amend the rules so that small businesses are not overly burdened by auditing their finances when they would not otherwise do so. The Commission seeks comment on this proposal. It also asks interested parties to suggest other alternatives to the audited financial statement requirement, and it seeks comment on whether an alternative—the one it proposes or any other—should be available to all F block applicants (or D and E block applicants if small business provisions are extended to these blocks), or only to applicants that do not otherwise use audited financial statements. The Commission also requests comment on whether applicants should continue to be allowed to rely on either fiscal years or calendar years in providing their gross revenues. Should they instead be required to base their size calculations on the most recent four quarters so that the Commission receives the most current information available?

D. Auction Schedule

72. While the rules do not establish a specific schedule for awarding the D, E, and F block broadband PCS licenses by competitive bidding, the Commission's reasons for creating these 10 MHz licenses and the communications industry's plans for using them directly affect when they should be auctioned. The Commission created the 10 MHz licenses to promote the provision of services that might not require a full 30 MHz of spectrum, or for aggregation with a 30 MHz PCS license or an existing cellular license.

73. On December 23, 1994, the Commission sought comment on whether to auction the 10 MHz F block licenses together with the other 10 MHz D and E block licenses. Of the six comments received, the majority favored a single auction for all three blocks. Arguments in favor of a single auction included efficiency advantages for bidders, administrative and cost savings, and an equal timeline for start-up and deployment of all 10 MHz licensees. Commenters also noted a substantial need in broadband PCS for licensees to aggregate spectrum up to the limits set by the Commission and observed that a single auction would allow bidders to obtain 20–MHz licenses to meet unique service needs. Arguments opposing a single auction were that separate auctions would expedite auction administration and promote opportunities for designated entities by awarding them the first 10 MHz licenses.

74. The Commission tentatively concludes that it should auction the D, E, and F frequency blocks concurrently in simultaneous multiple round auctions. The comments in response to the initial inquiry into this issue indicate that simultaneous access to all the 10 MHz licenses is important to the plans of some prospective PCS providers, and the Commission finds their arguments persuasive. The Commission seeks comment on this tentative conclusion. It also seeks comment on specific services that are planned for the D, E, and F licenses and how, if at all, auctioning all the licenses simultaneously would affect those planned services. The Commission is also interested in other factors that commenters believe would justify combining the auction of the D, E, and F block licenses, or that would argue against doing so.

75. If the Commission auctions the D, E, and F blocks concurrently, it also seeks comment on the option of auctioning the D and E licenses together in one auction and the F block licenses in a separate auction. This approach would accommodate the difference in eligibility requirements for the F block auction. The Commission seeks comment on whether it should adopt this approach. It also requests comment on whether the auction rules for these three blocks should be modified in any way if it implements this proposal.

III. Procedural Matters

A. Regulatory Flexibility Act

76. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in Appendix A of the *Notice*. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice*, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this *Notice*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

B. Ex Parte Rules—Non-Restricted Proceeding

77. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided

in Commission Rules. *See generally* 47 CFR §§ 1.1202, 1.1203, and 1.1206(a).

C. Initial Paperwork Reduction Act of 1995 Analysis

78. This *Notice* contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget (''OMB'') to take this opportunity to comment on the information collections contained in this *Notice* as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13. Public and agency comments are due at the same time as other comments on this *Notice*; OMB comments are due 60 days from the date of publication of this *Notice* in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

D. Comment Dates

79. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415 and 1.419, interested parties may file comments on or before April 15, 1996 and reply comments on or before April 25, 1996. To file formally in this proceeding you must file an original and four copies of all comments and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send your comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Comments will be available for public inspection during regular business hours in the Reference Center of the Federal Communications Commission, 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

80. Written comments by the public on the proposed and/or modified information collections are due on or before April 15, 1996. Written comments must be submitted by the Office of Management and Budget on the proposed and/or modified information collections on or before 60 days after the date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington, D.C. 20503 or via the Internet to fain—t@al.eop.gov.

E. Contact Persons

81. For further information concerning this proceeding, contact Mark Bollinger at 418–0660 (Auctions Division, Wireless Telecommunications Bureau).

IV. Ordering Clauses

82. Accordingly, it is ordered that, pursuant to Sections 1, 4(i), 4(j), 7, 303(r), 308(b), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 157, 303(r), 308(b), and 309(j), notice is hereby given of the proposed amendments to Parts 20 and 24 of the Commission's Rules, 47 CFR Parts 20 and 24, in accordance with the proposals in this Notice of Proposed Rule Making, and that COMMENT IS SOUGHT regarding such proposals.

83. It is further ordered that the Secretary shall send a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

List of Subjects

47 CFR Part 20

Commercial mobile radio services, Cellular/PCS cross-ownership.

47 CFR Part 24

Broadband personal communications services.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–7315 Filed 3–25–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket PS–140(c), Notice 5]

RIN 2137–AC34

Areas Unusually Sensitive to Environmental Damage

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Public workshop.

SUMMARY: RSPA invites industry, government agencies, and the public to the fourth workshop on unusually sensitive areas (USAs). The purpose of this workshop is to openly discuss the terms to be used in describing USAs, and the scope and objectives of the additional USA workshops. This workshop is a continuation of the USA workshops held June 15–16, 1995; October 17, 1995; and January 18, 1996.

DATES: The workshop will be held on April 10–11, 1996 from 8:30 a.m. to 4:00 p.m. Persons who are unable to attend may submit written comments in duplicate by May 28, 1996. However, persons submitting comments to be considered at the April 10–11 workshop must do so by April 3, 1996. Interested persons should submit as part of their written comments all material that is relevant to a statement of fact or argument. Late filed comments will be considered so far as practicable.

ADDRESSES: The workshop will be held at the U.S. DOT, Nassif Building, 400 Seventh Street SW., Room 8236–40, Washington, DC. Non-federal employee visitors are admitted into the DOT building through the southwest entrance at Seventh and E Streets, SW. Persons who want to participate in the workshop should call (202) 366–2392 or e-mail their name, affiliation, and phone number to samesc@rspa.dot.gov before close of business April 3, 1996.

Send written comments in duplicate to the Dockets Unit, Room 8421, RSPA, U.S. DOT, 400 Seventh Street SW., Washington, DC 20590–0001. Identify the docket and notice numbers stated in the heading of this notice.

All comments and docketed materials will be available for inspection and copying in Room 8421 between 8:30 a.m. and 4:30 p.m. each business day. A summary of the workshop will be available from the Dockets Unit about three weeks after the workshop.

FOR FURTHER INFORMATION CONTACT: Christina Sames, (202) 366–4561, about this document, or the Dockets Unit,

(202) 366–5046, for copies of this document or other material in the docket.

SUPPLEMENTARY INFORMATION: The pipeline safety laws (49 U.S.C. § 60109) require the Secretary of Transportation to prescribe regulations that establish criteria for identifying each hazardous liquid pipeline facility and gathering line, whether otherwise subject to 49 U.S.C. Chapter 601, located in an area that the Secretary, in consultation with the Environmental Protection Agency (EPA), describes as unusually sensitive to environmental damage if there is a hazardous liquid pipeline accident.

Consistent with the President's regulatory policy (E.O. 12866), RSPA wants to accomplish this congressional mandate at the least cost to society. Toward this end, RSPA is seeking early public participation in the rulemaking process by holding public workshops at which participants, including RSPA staff, may exchange views on relevant issues. RSPA hopes these workshops will enable government and industry to reach a better understanding of the problem and the potential solutions before proposed rules are issued.

On June 15 and 16, 1995, RSPA held the first public workshop to openly discuss the criteria being considered to determine USAs (60 FR 27948; May 26, 1995). Participants included representatives from the hazardous liquid pipeline industry; the Departments of Interior, Agriculture, Transportation, and Commerce; EPA; non-government agencies; and the public. Participants requested that additional workshops be held to further discuss this complex topic .

On October 17, 1995, RSPA held a second public workshop that focused on developing a process that could be used to determine if an area is a USA (60 FR 44824; August 29, 1995). Participants asked that the process include a series of workshops on topics such as guiding principles, the definition of terms that may be used when referring to USAs, drinking water source protection, biological resources, and human use resources.

The American Petroleum Institute (API) provided information on its current USA research and suggested that any final definition consider the resource to be protected, the likelihood of a given pipeline impacting that resource, and what can be done to reduce the risk to the resource. Other participants suggested integrating factors on the likelihood of a rupture occurring and the severity of the consequence into the USA definition. Participants also brainstormed guiding principles that could be used when determining if a given area is a USA.

RSPA held a third workshop on January 18, 1996, to further discuss the guiding principles for determining USAs (61 FR 342; January 4, 1996). The primary concerns voiced in this workshop were that drinking water resources and significant ecological resources be considered USA but that economic or recreational areas not be intrinsically considered USAs. A secondary concern voiced by the participants was the need to consider cultural resources as USAs.

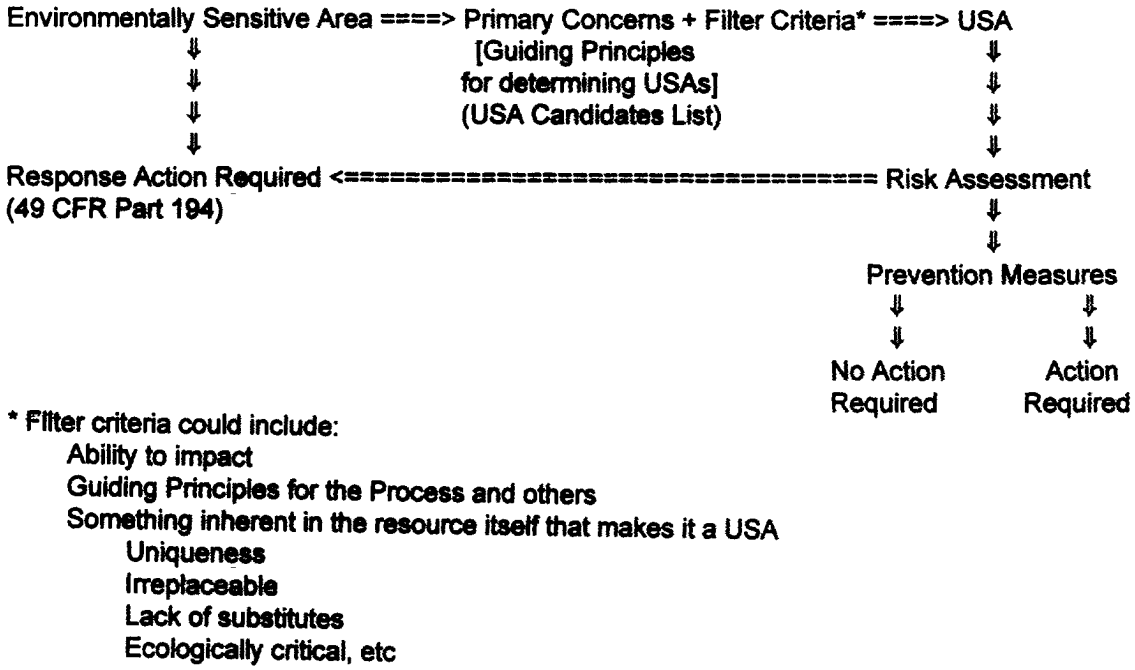
Indian tribal concerns were also identified and participants requested that additional research be conducted in this area.

Participants at the workshop also discussed the following guiding principles for the USA identification process and asked that the following be considered:

1. A functional definition of significance must be developed to determine USAs.
2. Human health and safety.
3. Serious threat of contamination.
4. Only areas in the trajectory of a potential spill, e.g. down gradient.
5. Not all areas identified as USAs will require preventative measures but all candidates for USAs will require protection through response planning under 49 CFR part 194. The process should clarify how sensitive areas are protected under the Pipeline Safety Act separate and apart from protection under the 49 CFR part 194.
6. Operators that have voluntarily taken measures that exceed the regulatory requirements to minimize the potential for spills in their operations should receive credit for these measures in other rulemakings, thereby resulting in exemptions from these additional rulemakings.
7. It is expected that no pipeline operator will be required to collect natural field resource data to determine USAs.
8. USAs should be subject to a systematic review process. USAs may change through time as species migrate, change location or for other reasons. The USA definition should be explicit and practical in application.
9. All phases of the USA definition process should be pilot tested for validity, practicality, and workability, to the extent practical.
10. The government agencies must describe and identify USAs so that the data will not be subject to various interpretations and will be applied consistently. The standards and criteria for resource sensitivity should be uniform on a national basis such that equivalent resources receive equivalent sensitivity assessments regardless of regionally based response priorities.
11. Sources of USA data must be readily available to the public and uniform in criteria and standards. The standards and criteria for resource sensitivity should be uniform on a national basis such that equivalent resources receive equivalent sensitivity assessments regardless of regionally based priorities.

The following diagram was created to display how the process could work:

BILLING CODE 4910–60–P



BILLING CODE 4910–60–C

Finally, participants brain stormed and identified the USA terms that they thought needed to be clarified. The following list is the result of that discussion. The workshop on April 10 will focus on the criteria, components, and parameters of these terms. This list is not final and RSPA invites comments on these terms and submissions of additional terms. This list and any additional terms that are submitted to the docket before April 3 will be considered at the April 10 workshop:

1. Serious threat
2. Contamination
3. Significant
4. Ecological
5. Economic areas
6. Recreational areas
7. Cultural areas
8. Readily available
9. Uniform

The workshop on April 11 will focus on the scope and objectives of the additional USA workshops on drinking water sources, ecological resources, cultural resources, and Indian tribal concerns. RSPA invites comments on the scope and objectives of these additional workshops. Items that are submitted to the docket before April 3 will be considered at the April 11 workshop.

Persons interested in receiving a transcript of the first or third workshop, the summary of the second workshop, material presented at the workshops, or comments submitted to the docket should contact the Dockets Unit at (202) 366–5046 and reference docket PS–140, PS–140(b), and PS–140(c).

Issued in Washington, DC on March 21, 1996.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 96–7295 Filed 3–25–96; 8:45 am]

BILLING CODE 4910–60–P

Surface Transportation Board

49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 8)]

Exemption From Regulation—Boxcar Traffic

AGENCY: Surface Transportation Board.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Surface Transportation Board (the Board) is proposing to eliminate an obsolete regulation pertaining to recyclable rates.

DATES: Comments are due on April 25, 1996.

ADDRESSES: Send comments (an original and 10 copies) referring to Ex Parte No. 346 (Sub-No. 8) to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue NW., Washington, DC 20423.

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

SUPPLEMENTARY INFORMATION: Effective January 1, 1996, the ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (ICCTA) abolished the Interstate Commerce Commission (ICC) and established the Board. Section 204 of the ICCTA provides that ''[t]he Board shall promptly rescind all regulations established by the [ICC] that are based on provisions of law repealed and not substantively reenacted by this Act.'' In *Removal of Obsolete Recyclables Regulations*, 1 S.T.B. 7 (1996) (*Obsolete Regulations*), the Board removed, *inter alia*, obsolete recyclable regulations at 49 CFR 1134, pertaining to discrimination against recyclables, and at 49 CFR 1145, concerning rail rates on recyclables, because Congress repealed former 49 U.S.C. 10710 and 10731, the statutory bases for these regulations. We stated that we would separately consider the disposition of 49 CFR 1039.14(b)(5), which excludes rates on nonferrous recyclable commodities from the boxcar exemption.

In *Exemption from Regulation —Boxcar Traffic*, 367 I.C.C. 424 (1983), the ICC exempted the rail transportation of all commodities transported in boxcars from rate and certain car hire regulations. The ICC, however, excluded nonferrous recyclables from this exemption ''only because Congress itself has singled them out for the application of special standards.'' 367 I.C.C. at 440. The ICC noted the reference to recyclable rates at former 49 U.S.C. 10731(e).

Although the statutory basis given by the agency for excluding recyclable commodities from the boxcar exemption has been repealed, and we do not believe there are other valid reasons to maintain the exception, we will not follow the procedure in *Obsolete Regulations* by issuing a final rule now.

Instead, we will issue a notice proposing to remove 49 CFR 1039.14(b)(5) from the regulations and redesignate paragraphs (6) and (7) to allow the public the opportunity to address whether there is any good reason to maintain the exception for recyclables. Comments (an original and 10 copies) are due on April 25, 1996.

The Board certifies that this rule, if adopted, would not have a significant economic effect on a substantial number of small entities. This proposed rule will reduce regulation; it imposes no new reporting or other requirements directly or indirectly on small entities. Although we are proposing that recyclables no longer be excepted from the boxcar exemption, it appears that the impact, if any, on small entities would not be significant, nor would it likely affect a significant number of small entities. The Board, however, seeks comments on whether there would be effects on small entities that should be considered.

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

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

Decided: March 12, 1996.

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

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble and under the authority of 49 U.S.C. 721(a), the Board proposes to amend title 49, chapter X, part 1039 of the Code of Federal Regulations as set forth below:

PART 1039—EXEMPTIONS

1. The authority citation for part 1039 continues to read as follows:

Authority: 5 U.S.C. 553 and 49 U.S.C. 721 and 10502.

§ 1039.14 [Amended]

2. Section 1039.14 is amended by removing paragraph (b)(5) and redesignating paragraphs (b)(6) and (7) as paragraphs (b)(5) and (6).

[FR Doc. 96–7239 Filed 3–25–96; 8:45 am]

BILLING CODE 4915–00–P

49 CFR Part 1313

[STB Ex Parte No. 541]

Railroad Contracts

AGENCY: Surface Transportation Board.

ACTION: Advance Notice Of Proposed Rulemaking.

SUMMARY: Because the ICC Termination Act of 1995 (ICCTA) abolished the Interstate Commerce Commission (ICC) and revised the law respecting transportation contracts entered into by rail carriers to provide specified rail services under specified rates and conditions, the contract regulations formerly issued by the ICC are no longer in complete harmony with the applicable law. The Surface Transportation Board (Board) is issuing this advance notice of proposed rulemaking to solicit suggestions from the transportation community for appropriate regulations. Following the receipt of comments, the Board will issue a notice of proposed rulemaking.

DATES: Comments are due on April 25, 1996.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte No. 541 to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue NW., Washington, DC 20423.

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

SUPPLEMENTARY INFORMATION: The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (ICCTA), enacted on December 29, 1995, abolished the ICC and transferred the responsibility for regulating rail transportation to the Board. *See* ICCTA Section 101 (abolition of the ICC). *See also* new 49 U.S.C. 701(a) (establishment of the Board), as enacted by ICCTA Section 201(a). The transfer took effect on January 1, 1996. *See* ICCTA Section 2 (effective date).

The new law (i.e., the law in effect on and after January 1, 1996) differs in several important respects from the former law (i.e., the law in effect prior to January 1, 1996). This notice concerns the differences between new 49 U.S.C. 10709 and former 49 U.S.C. 10713 as respects contracts entered into by rail carriers to provide specified rail services under specified rates and conditions.

New § 10709(a) provides that rail carriers may enter into contracts to provide specified rail services under specified rates and conditions. This is a reenactment of former § 10713(a).

New § 10709(b) relieves a party to such a contract from any duties other than those specified by the contract. This is a reenactment of former § 10713(h).

New § 10709(c) relieves transportation provided under such contract from the regulatory provisions of new 49 U.S.C. 10101–11908, and makes the exclusive remedy for any alleged breach of such a contract an action in an appropriate state court or United States district court, unless the parties agree otherwise. This is a reenactment of former § 10713(i). New § 10709(c)(2) adds a clarification that this provision does not, in and of itself, confer original jurisdiction on the United States district courts.

New § 10709(d)(1) requires that a summary of each contract for the transportation of fertilizer and agricultural products, including grain as defined in 7 U.S.C. 75 [1] and products thereof, be filed with the Board, containing such nonconfidential information as the Board prescribes. This represents a substantial narrowing from the prior filing requirement. Under former § 10713(b)(1), the filing requirement applied to all rail transportation contracts (not just contracts to transport agricultural products), and carriers were required to file the complete contract with the ICC (in addition to the summary of nonconfidential information).

New § 10709(d)(1) directs the Board to establish rules for such contracts for agricultural products, to ensure that the essential terms of such contracts are available to the general public. But, unlike former § 10713(b)(2)(A), the new statute does not list the minimum essential terms; it leaves that matter for Board implementation. Similarly, unlike former § 10713(b)(2)(B), the new statute does not address whether a new filing is required for amendments, supplements, or changes to such contracts; that too is a matter left to the Board.

New § 10709(d)(2) provides that documents, papers, and records relating to a rail transportation contract are not subject to disclosure under the Freedom of Information Act, 5 U.S.C. 552 (FOIA). This is a new provision, with no analogue in former § 10713.

New § 10709(e) reenacts the ''grandfathering'' provision of former § 10713(j) for rail transportation contracts that predate the Staggers Rail Act of 1980.

New § 10709(f) specifies that a rail carrier that enters into a transportation contract remains subject to the common carrier obligation, as set forth in new

[1] 7 U.S.C. 75 is the codification of section 3 of the United States Grain Standards Act.

§ 11101, with respect to rail transportation not provided under such a contract. This is a new provision that clarifies prior law.

New § 10709(g) reenacts the complaint provisions of former § 10713(d), but limits their applicability. Under new § 10709(g), complaints may only be filed against contracts for the transportation of agricultural products. As to such contracts, four grounds of complaint are available. They are: (1) a complaint by any shipper alleging that it will be harmed because the contract will unduly impair the ability of the contracting carrier to meet its common carrier obligations to the complainant under new § 11101 (new § 10709(g)(2)(A)(i)); (2) a complaint by a port alleging that it will be harmed because the contract will result in unreasonable discrimination against it (new § 10709(g)(2)(A)(ii)); (3) a complaint by an agricultural shipper seeking matching terms (new § 10709(g)(2)(B)(i)); and (4) a complaint by an agricultural shipper alleging that the contract constitutes a destructive competitive practice (new § 10709(g)(2)(B)(ii)).

Such complaints must be filed within 30 days after the contract summary is filed (new § 10709(g)(1)), and the Board has 30 days to resolve complaints (new § 10709(g)(3)). It should be noted that, in contrast to former § 10713(b)(2)(A), new § 10709(g) does not address discovery by agricultural shippers seeking remedies. This is a matter left to the Board's discretion.

New § 10709(h) retains the fleetwide equipment limitation of former § 10713(k), which prohibits a carrier from committing more than 40 percent of its equipment capacity (by car type) in contracts for the transportation of agricultural commodities (including forest products, but not including wood pulp, wood chips, pulpwood or paper), without special permission from the Board. However, that limitation is set to expire on September 30, 1998. (A further limitation in former § 10713(k), on the amount of equipment that could be committed by contract to an individual shipper, was not reenacted.)

It is important to note that a rail carrier may enter into transportation contracts only to the extent that such contracts do not impair that carrier's ability to meet its common carrier obligations. New § 11101(a) provides that a rail carrier does not violate its common carrier obligations merely because it fulfills reasonable contractual commitments before responding to reasonable requests for common carrier service. New § 11101(a) further provides, however, that contractual commitments which deprive a carrier of its ability to respond to reasonable requests for common carrier service are not reasonable.

New § 10709 does not retain the railroad contract rate advisory service of former § 10713(m).

Request for Comments

The ICC's regulations implementing former § 10713, set forth at 49 CFR Part 1313, are not appropriate for implementing new § 10709. Therefore, we invite all interested persons to submit suggestions for regulations that would be appropriate to implement new § 10709. We encourage the various sectors of the transportation community to discuss these matters and present a proposal for the Board's consideration.

Comments (an original and 10 copies) must be in writing, and are due on April 25, 1996.

We encourage any commenter that has the necessary technical wherewithal to submit its comments as computer data on a 3.5-inch floppy diskette formatted for WordPerfect 5.1, or formatted so that it can be readily converted into WordPerfect 5.1. Any such diskette submission (one diskette will be sufficient) should be in addition to the written submission (an original and 10 copies).

Small Entities

Because this is not a notice of proposed rulemaking within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), we need not conduct at this point an examination of impacts on small entities. We will certainly welcome, of course, any comments respecting whether any regulations that commenters may suggest would have significant economic effects on any substantial number of small entities.

Environment

The issuance of this advance notice of proposed rulemaking will not significantly affect either the quality of the human environment or the conservation of energy resources. Furthermore, we would not expect that regulations suggested for implementing new 49 U.S.C. 10709 would significantly affect either the quality of the human environment or the conservation of energy resources. We certainly welcome, of course, any comments respecting whether any suggested regulations would have any such effects.

Authority: 49 U.S.C. 721(a) and 10709.

Decided: March 12, 1996.

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

Vernon A. Williams,

Secretary.

[FR Doc. 96–7238 Filed 3–25–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 662

[Docket No. 960314075–6077–03; I.D. 031196F]

RIN 0648–AI16

Northern Anchovy Fishery; Removal of Regulations

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

ACTION: Initial decision to withdraw plan approval, proposed rule to remove regulations, and request for comments.

SUMMARY: NMFS announces its initial determination to withdraw Secretarial approval of the Northern Anchovy Fishery Management Plan (FMP), and proposes to remove the regulations implementing the FMP. The anchovy fishery would continue to be regulated by the State of California. This action is being proposed because conditions have changed significantly since approval of the FMP. Harvests of northern anchovy have greatly declined since 1982 and this is unlikely to change in the foreseeable future. The intent of this rulemaking is to remove regulations that duplicate state management and are no longer necessary. This rulemaking is in accordance with the President's Regulatory Reinvention Initiative.

DATES: Comments on the proposed rule must be received on or before May 9, 1996.

ADDRESSES: Send comments on the proposed withdrawal and removal, and on the Environmental Assessment/Regulatory Impact Review (EA/RIR) to Ms. Hilda Diaz-Soltero, Director, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. A copy of the EA/RIR may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Mr. Rodney McInnis or Mr. James Morgan at (310) 980–4030.

SUPPLEMENTARY INFORMATION: The FMP to manage the central subpopulation of northern anchovy was implemented on September 13, 1978 (43 FR 40868). The

anchovy resource is a major forage species for marine mammals, other fish, and birds such as the California brown pelican, which is listed as endangered under the Endangered Species Act (ESA). There have been six amendments to the FMP.

The FMP was one of the first fishery management plans developed by the Pacific Fishery Management Council, under the authority of the Magnuson Fishery Conservation and Management Act. At the time, substantial reduction fisheries existed in the United States and Mexico. (Reduction fisheries processed anchovy into fish flour/meal, oil, fertilizer, or other products not intended for human consumption). Further, recreational fisheries for kelp/sand bass, white seabass, bonito, barracuda, yellowtail, and tunas depended on northern anchovy as live bait for its livelihood, as it still does today. The FMP was designed to resolve difficult allocation issues. There was, and still is, no agreement with Mexico on how to manage the fishery.

With the decline in U.S. harvests and little prospect for growth in the fishery, interjurisdictional and allocation issues, which might require Federal intervention, no longer exist. In recent years, virtually the entire fishery has occurred in California waters, and nearly all harvesters and processors are California citizens utilizing vessels registered in California. The condition of the fishery is such that no management authority over this fishery is exercised through Federal regulations that are beyond those available to the State.

California has management measures in place for anchovy and other components of the coastal pelagic species complex. Should this proposed removal of Federal regulations be finalized, NMFS anticipates that California will broaden its management to include the anchovy fishery with substantially the same controls as were provided by Federal regulations. This would also unify management of the coastal species complex fisheries.

Therefore, Federal management is neither necessary nor appropriate for this fishery and unnecessarily duplicates the State of California's management. For these reasons, NMFS proposes to withdraw approval for the FMP and remove the FMP's implementing regulations (50 CFR part 662), leaving management of the anchovy resource to the State of California.

Classification

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. We expect that California will regulate fishing in the same manner that we currently do. Because virtually the entire anchovy fishery takes place in California waters, conditions in the fishery should not change.

NMFS is conducting an ESA consultation with the U.S. Fish and Wildlife Service regarding the effects of this proposed action on the endangered brown pelican.

List of Subjects in 50 CFR Part 662

Fisheries.

Dated: March 20, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, under the authority of 16 U.S.C. 1801 *et seq.*, 50 CFR part 662 is proposed to be removed.

[FR Doc. 96–7185 Filed 3–25–96; 8:45 am]

BILLING CODE 3510–22–F

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50 CFR Part 674

[Docket No. 960314075–6083–04; I.D. 031196D]

RIN 0648–AI16

Salmon Fisheries Off the Coast of Alaska; Removal of Implementing Regulations

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS announces its initial determination to withdraw approval of the Fishery Management Plan for the Salmon Fisheries in the Exclusive Economic Zone (EEZ) off the Coast of Alaska East of 175° E. Long. (FMP). NMFS proposes to remove the regulations implementing the FMP. This action is necessary, because NMFS has determined that the State of Alaska adequately manages the salmon fisheries in Federal waters, and, therefore, the need for a Federal FMP no longer exists. This action is in accordance with the President's Regulatory Reinvention Initiative.

DATES: Comments must be received at the following address by May 9, 1996.

ADDRESSES: Comments must be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. Individual copies of the Environmental Assessment/Regulatory Impact Review prepared for this action may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, 907–586–7228.

SUPPLEMENTARY INFORMATION:

The Magnuson Fishery Conservation and Management Act (Magnuson Act) authorizes the North Pacific Fishery Management Council (Council) to prepare and amend fishery management plans for any fishery in waters under its jurisdiction. In December 1978, the Council prepared the FMP and submitted it to the Secretary of Commerce (Secretary) for approval. The Secretary approved the FMP, and it was implemented in May 1979 with Federal regulations at 50 CFR part 674.

The Assistant Administrator for Fisheries, NOAA, submitted a letter, dated February 23, 1996, to the Council Chairman, expressing NMFS' intent to withdraw approval of the FMP and to remove its implementing regulations. The State of Alaska would retain its authority to manage State-permitted vessels in Federal waters. Currently, all vessels that fish for salmon in Federal waters are registered under the laws of the State of Alaska, and, therefore, are subject to the State laws governing the fishery. In the unlikely event that unregistered vessels were to conduct directed salmon fishing operations in the EEZ, NMFS could address the problem through regulatory action pursuant to the Pacific Salmon Treaty Act of 1985 or the Magnuson Act.

The FMP originally established the Council's management authority over the salmon fisheries in the Federal waters off the coast of Alaska east of 175° E. long., including parts of the Gulf of Alaska, Bering Sea, Chuckchi Sea, and Arctic Ocean. The International North Pacific Fisheries Commission, which is authorized by the International Convention for the High Seas Fisheries of the North Pacific Ocean, manages salmon fisheries west of 175° E. long.

The FMP management area is divided into two management units located east and west of the longitude of Cape Suckling (143°53′35″ W. long.). The FMP has historically focused on the troll fishery in the eastern management

unit. Implementing regulations governing the troll fishery consisted of several management measures, including a fishing season, gear restrictions, a limit on the number of vessel troll permits, and a requirement for trollers to have either a State of Alaska or a Federal limited entry troll permit. The Council intended all of its management measures governing the sport fishery and the commercial troll fishery to complement State of Alaska regulations for the salmon fisheries in adjacent State waters. The FMP has been amended four times. Amendment 3 deferred the management of the salmon fisheries to the State of Alaska.

NMFS has considered the adequacy of State of Alaska management of salmon fisheries within waters of the Council's area of authority with respect to advisory guidelines at 50 CFR part 602, and has determined that State management is adequate. Therefore, NMFS has determined that Federal management is not necessary and proposes to withdraw Secretarial approval of the FMP and remove the implementing Federal regulations.

Classification

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities because the State of Alaska is already managing the fishery with its regulations. Removal of Federal regulations eliminates duplication of effort but does not effect management of the fishery. As a result, a regulatory flexibility analysis was not prepared.

Consultation pursuant to section 7 of the Endangered Species Act will be initiated for the 1996 fishery and for the withdrawal of the FMP.

An RIR was prepared for this proposed rule that describes the management background, the purpose and need for action, and the management action alternatives. Copies of the RIR can be obtained from (see **ADDRESSES**).

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

List of Subjects in 50 CFR Part 674

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 21, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, under the authority of 16 U.S.C. 1801 *et seq.*, part 674 is proposed to be removed.

[FR Doc. 96–7286 Filed 3–25–96; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 59
Tuesday, March 26, 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

Forest Service

Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Forest Service, USDA.

ACTION: Notice of intent request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Forest Service's intention to extend a currently approved information collection. The purpose is to collect specific sales data from businesses licensed to utilize the ''Woodsy Owl'' symbol for commercial use. The information is also used to determine if guaranteed sales objectives are being met. This data is needed to comply with 7 U.S.C. 2201 and regulations at 36 CFR part 272—Use of ''Woodsy Owl'' Symbol.

DATES: Comments must be submitted on or before May 28, 1996.

ADDRESSES: All comments should be addressed to: Director, Cooperative Forestry Staff, Attn: Woodsy Owl Program Coordinator, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090.

FOR FURTHER INFORMATION CONTACT: Doris Nance at (202) 401–7781.

SUPPLEMENTARY INFORMATION:

Tile: USDA, Forest Service Commercial Use of ''Woodsy Owl'' Symbol.

OMB Number: 0596–0087.

Expiration Date of Approval: March 31, 1996.

Type of Request: Extension of a currently approved information collection.

Abstract: This collection of information is used to bill licensees for royalty fees for Woodsy Owl merchandise sold to the public. The information is also used to determine whether licensees are meeting the goals and purposes of the Woodsy Owl Program.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 hours per response.

Respondents: Businesses or other for-profit, and small businesses or organizations.

Estimated Number of Respondents: 10.

Estimated Number of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 800 hours.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of this 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 the use of automated collection techniques or other forms of information technology.

Dated: March 19, 1996.

William L. McCleese,

Associate Deputy Chief, State and Private Forestry.

[FR Doc. 96–7177 Filed 3–25–96; 8:45 am]

BILLING CODE 3410–11–M

Rural Utilities Service

Kodiak Electric Association, Inc. Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and RUS Environmental Policies and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact (FONSI) with respect to a project proposed by Kodiak Electric Association, Inc. (KEA), of Kodiak, Alaska. The proposed project consists of constructing a 10 MW combustion turbine electric generation power plant and fuel tanks for increasing generation capacity at its Swampy Acres Substation. The new generation would replace the four existing diesel generators representing a total of 6 MW of capacity at the same site. The need for this project was established in KEA's 1994 Power Requirements Study and 1994 Power Generation Study.

RUS has concluded that the impacts from the proposed project would not be significant and that the proposed action is not a major Federal action significantly affecting the quality of the human environment. Therefore, the preparation of an environmental impact statement is not necessary.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Wolfe, Senior Environmental Protection Specialist, Engineering and Environmental Staff, Rural Utilities Service, Agriculture South Building, Washington, DC 20250–1571, telephone (202) 720–1784.

SUPPLEMENTARY INFORMATION: RUS, in accordance with its environmental policies and procedures, required that KEA prepare a Borrower's Environmental Report (BER) reflecting the potential impacts of the proposed facilities. The BER, which includes input from the Federal, State, and local agencies, has been adopted as RUS's Environmental Assessment for the project in accordance with 7 CFR Section 1794.61. RUS has concluded that the BER represents an accurate assessment of the environmental impacts of the project. The proposed project will not affect any known properties listed or eligible for listing in the National Register of Historic Places. The project will be constructed on land which has previously been disturbed. However, if previously unknown resources are discovered during project construction, KEA will halt construction while the significance of the find and proper mitigation is determined. Given these procedures, the project will not have any significant effect on cultural resources. The project should have no impact on floodplains, wetlands, important farmland, prime forest land, formally classified areas, coastal areas, federally listed or proposed for listing threatened or endangered species or their critical habitat. The project should also have no significant impact on

water quality, air quality, noise or visibility.

Alternatives considered to the project as proposed were no action, a review of various alternative energy sources and their application, power demand and load management alternatives, and alternative sites. RUS has considered these alternatives and concluded that the project as proposed will allow KEA to provide adequate and reliable electric service to the customers in the Kodiak Island with a minimum of adverse impact.

Copies of the BER and FONSI are available for review at RUS at the aforementioned address, or may be reviewed at or obtained from the offices of KEA, P.O. Box 787, Kodiak, Alaska, 99615 telephone (907) 486–7700.

Dated: March 18, 1996.

Adam M. Golodner,

Deputy Administrator, Program Operations.

[FR Doc. 96–7248 Filed 3–25–96; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Housing Vacancy Survey; Proposed Agency Information Collection Activity; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Submit written comments on or before May 28, 1996.

ADDRESS: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Oscar Perez, Bureau of the Census, FOB 3, Room 3340, Washington, DC 20233–8400, (301) 457–3806.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is requesting clearance for the Housing Vacancy Survey (HVS). The current clearance expires December 31, 1996. Title 13, United States Code, Section 182, authorizes the collection of the HVS. The HVS has been conducted since 1956 and serves a broad array of data users as described below.

We collect the HVS data for a sample of vacant housing units identified in the monthly Current Population Survey (CPS) sample, which provide the only quarterly and annual statistics on rental vacancy rates and homeownership rates for the United States, the 4 census regions, the 50 states and the District of Columbia, and the 75 largest Metropolitan Areas (MAs). Private and public sector organizations use these rates extensively to gauge and analyze the housing market with regard to supply, cost, and affordability at various points in time. In addition, the rental vacancy rate is a component of the index of leading economic indicators, published by the Department of Commerce.

Policy analysts, program managers, budget analysts, and Congressional staff use these data to advise the executive and legislative branches of Government with respect to the number and characteristics of units available for occupancy and the suitability of housing initiatives. Several other Government agencies use these data on a continuing basis in calculating consumer expenditures for housing as a component of the gross national product; to project mortgage demands; and to measure the adequacy of the supply of rental and homeowner units. In addition, investment firms use the HVS data to analyze market trends and for economic forecasting.

II. Method of Collection

Field representatives collect this HVS information by personal-visit interviews in conjunction with the regular monthly CPS interviewing. If a unit is vacant and intended for year-round occupancy, as determined during the CPS interview, we include it in the HVS sample. Approximately 4,800 units in the CPS sample meet these criteria each month. We interview individuals who have knowledge of the vacant sample unit (*e.g.*, landlord, rental agents, neighbors). All interviews are conducted using computer-assisted interviewing.

III. Data

OMB Number: 0607–0179.

Form Number: There are no forms associated with this supplement. We conduct all interviewing on computers.

Type of Review: Regular.

Affected Public: Individuals who have knowledge of the vacant sample unit (*e.g.*, landlord, rental agents, neighbors).

Estimated Number of Respondents: 4,800 per month.

Estimated Time Per Response: 3 minutes.

Estimated Total Annual Burden Hours: 2,880.

Estimated Total Annual Cost: $585,000.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 21, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–7300 Filed 3–25–96; 8:45 am]

BILLING CODE 3510–07–M

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an amended Export Trade Certificate of Review, Application No. 87–10A004.

SUMMARY: On December 1, 1996, the Department of Commerce issued an amendment to the Export Trade Certificate of Review granted to the Association for Manufacturing Technology (''AMT''). The original Certificate was issued on May 19, 1987 (52 FR 19371) and notice of issuance was published in the Federal Register on May 22, 1987.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of l982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1993).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the Federal Register. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

AMT's Export Trade Certificate of Review has been amended to:

1. Add each of the following companies as a new ''Member'' of the Certificate: Acro Automation Systems, Inc., Milwaukee, Wisconsin; Automatic Design Concepts, Bridgeport, Connecticut; Bentz, Incorporated, Detroit, Michigan; Capco, Inc., Roanoke, Virginia; Creative Automation, Inc., Plymouth, Michigan; Edgetek Machine Corporation, Meriden, Connecticut; ESAB L–TEC Cutting Systems, Florence, South Carolina; GEC Alsthom Cyril Bath Company, Monroe, North Carolina; Grav-i-Flo Corporation, Sturgis, Michigan; Hobart Brothers Company, Livermore, California; ISI Robotics, Frazer, Michigan; Jasco Tools, Inc., Rochester, New York; Keller Industries, Hollandale, Minnesota; K.T. Design & Prototype, Winchester, Virginia; Metalsoft, Inc., Santa Ana, California; MHI Machine Tool USA, Inc., Bristol, Connecticut (controlling entity: Mitsubishi Heavy Industries of America); MHO Corporation, Emeryville, California; Natco/Carlton L.P., Richmond, Indiana; OMAX Corporation, Auburn, Washington; Optical Gaging Products, Inc., Rochester, New York; Precitech Inc., Keene, New Hampshire; RWC Incorporated, Bay City, Michigan; Taurus Products, Inc., Sterling Heights, Michigan; Wisconsin Machine Tool Corporation, West Allis, Wisconsin.

2. Delete each of the following companies as a ''Member'' of the Certificate: Airlock Manufacturing Company; Autospin, Inc.; Black Brothers Co.; Bracker Corporation Pittsburgh; Cammann, Inc.; Curtin Hebert Co. Inc.; DEA; DeHoff Incorporated; Ekstrom, Carlson & Company; Federal Press Company; Feldmann, Inc.; Grotnes Metalforming Systems, Inc.; Hoglund Technology Corporation; IRD Mechanalysis, Inc.; Imperial Stamp & Engraving Company; J.A.C.P., Inc.; Kalamazoo Saw Co.; Louis Levin & Sons Inc.; Morgan Industries, Inc.; Multipress Division; Rank Taylor Hobson Inc.; S–P/Sheffer International, Inc.; Schuler Incorporated.

3. Change the listing of the company name for each current ''Member'' cited in this paragraph to the new listing cited in this paragraph in parenthesis as follows: Cellular Concepts Company (Cellular Concepts Co.); Control Laser Corporation (Excel/Control); Debur Corporation (Surf/Tran Burlytic Systems Division); S.E. Huffman Corporation (Huffman); Katy/CRL, Inc. (CRL Industries, Inc.); Komatsu-Cybermation (Komatasu Cutting Technologies); Mattison Machine Works (Mattison Technologies); Moore Special Tool Co., Inc. (Moore Tool Co.); Morey Machinery, Inc. (Morey Machinery Manufacturing Corp.); Niagara Machine & Tool Works (Clearing Niagara); Positech Corporation (CM Positech); Roberts Machine Corp. (Niagara Falls Grinders); Setco Sales company (Setco); Sheffield Schaudt Grinding Systems, Inc. (United Grinding Technologies); Whitnon Spindle Division/GMN (Whitnon Spindle Division/Setco).

A copy of the amended Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4 102, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C 20230.

Dated: March 20, 1996.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 96–7299 Filed 3–25–96; 8:45 am]

BILLING CODE 3510–DR–P

National Oceanic and Atmospheric Administration

[I.D. 031196B]

Marine Mammals; Pinniped Removal Authority

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

ACTION: Notice of revised Letter of Authorization and availability of an Environmental Assessment.

SUMMARY: NMFS announces modifications to the conditions for the lethal removal of individually identifiable California sea lions that are impacting winter steelhead that migrate through the Ballard Locks in Seattle, WA, under a Letter of Authorization (LOA) issued to the State of Washington. NMFS also announces the availability of an Environmental Assessment (EA) that examines the environmental consequences of alternatives for modifying the conditions for lethal removal of sea lions.

ADDRESSES: A copy of the EA and other documentation may be obtained by writing to William Stelle, Jr., Director, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115, or by telephoning (206) 526–6150.

SUPPLEMENTARY INFORMATION: Pursuant to section 120(b) of the Marine Mammal Protection Act (MMPA), the State of Washington submitted an application to NMFS on June 30, 1994, requesting consideration of lethal removal of California sea lions at the Ballard Locks in Seattle, WA. In response to the application, NMFS formed the Ballard Locks Pinniped-Fishery Interaction Task Force (Task Force). The Task Force met in late 1994, reviewed the available information and recommended approval of lethal removal with conditions. NMFS took the recommendations of the Task Force and public comments into consideration and issued a 3-year LOA to the Washington Department of Fish and Wildlife (WDFW) on January 4, 1995, that provided terms and conditions for lethal removal through June 30, 1997. NMFS prepared an EA in January 1995 that considered lethal removal, as well as non-lethal alternatives, and determined that the authorized lethal removal would not have a significant effect on the human environment in accordance with the Council on Environmental Quality's regulations implementing the National Environmental Policy Act (NEPA).

Section 120 of the MMPA requires that the Task Force ''evaluate the effectiveness of the permitted intentional lethal taking or alternative actions implemented'' and ''if implementation was ineffective in eliminating the problem interaction, the Task Force shall recommend additional actions.'' Accordingly, the Task Force was reconvened in September 1995 to evaluate the effectiveness of the measures taken by the State during the winter steelhead run in 1995 and prepared a report with recommendations for modifications to the LOA to eliminate sea lion predation on returning adult steelhead to the maximum extent possible. The report and recommendations were submitted to NMFS on November 8, 1995.

Based on the Task Force report and new information collected since issuance of the LOA in January 1995, NMFS has concluded that the previously issued conditions under which the lethal removal of California sea lions may be implemented, should be modified to better protect the depressed and declining Lake Washington winter steelhead population. The winter steelhead spawning escapement in 1994/95 was 126 fish, and the 1995/96 run size is predicted to be approximately 146 steelhead. The 1995/96 steelhead run comprises primarily the progeny from the 1990/91 and 1991/92 brood years when escapements exceeded 200 fish (621 and 599 respectively) and, therefore, represents the ''last best'' opportunity to have sufficient numbers of spawners available upon which to base a potentially successful recovery program. After the 1995/96 run, the number of returning adult spawners will likely decline precipitously because the broodstock in the years that will produce these future runs was extremely small; the 1996/97 run is estimated to be less than 100 steelhead. The 1995/96 run size projection of 146 steelhead is substantially below the goal of 1600 spawners (91 percent below) needed to fully seed the available habitat. In addition, the number of returning adult steelhead is within the range considered to be near the threshold level below which the ability of the population to recover may be impaired. Therefore, sea lion predation on adult spawners returning in 1996 and beyond is likely to have a significant negative impact on the status and recovery of this steelhead population. In contrast, only a small number of ''predatory'' male sea lions (about six to ten) are responsible for the impacts on the steelhead run, and removal of these sea lions will have an insignificant impact on the current population of California sea lions (U.S. stock), which is estimated to be in excess of 161,000 individuals and has been increasing at a rate of 5.2 percent since 1975.

In accordance with section 120 of the MMPA, NMFS has modified the conditions contained in the LOA issued to the State of Washington on January 4, 1995, and sent a letter to the State stipulating the new conditions for lethal removal of ''predatory'' California sea lions at the Ballard Locks as follows.

1. Non-lethal deterrence efforts, such as acoustic deterrence, must be attempted prior to lethal removal. If an ''acoustic barrier'' is implemented, other means of non-lethal deterrence, such as underwater firecrackers, should be attempted on sea lions that enter and forage in the ensonified area.

2. Only ''predatory'' California sea lions may be lethally removed. A ''predatory'' sea lion is an individually identified sea lion (i.e., one bearing a brand mark, dart tag, flipper tags or other distinguishable natural marks) that:

a. Has been observed by biologists monitoring sea lion predation to have preyed on returning steelhead in the inner bay area of the Lake Washington Ship Canal (upstream of the railroad bridge); and

b. Has penetrated the acoustic barrier and has been observed foraging in the ensonified zone during the steelhead run since January 1, 1994 (when the acoustic deterrence program began); and

c. Is observed engaging in foraging behavior in the inner bay area (upstream of the railroad bridge) during the current steelhead season, between January 1 and May 31, by biologists monitoring sea lion predation at the Locks.

3. Information collected to date indicates that sea lions with brand numbers 17, 41 and 225 meet the definition of a ''predatory'' sea lion if they are observed foraging in the inner bay area during the current or next year's steelhead season from January 1 to May 31. Furthermore, sea lions with brand numbers 45 and 87 will meet the definition if they are observed to prey on a steelhead in the inner bay area during the current or next year's steelhead season from January 1 to May 31. Lethal removal of other sea lions is authorized only if the State determines that the subject animal meets the ''predatory'' sea lion definition and obtains concurrence with such determination from the Director, Northwest Region, NMFS (Regional Director).

4. Lethal removal of ''predatory'' sea lions is authorized from January 1 through May 31. The State shall report any lethal takings under this authorization to the Regional Director within 48 hours following implementation of the lethal action.

5. Active capture methods utilizing tangle nets and potential use of drugs, which may result in sea lion mortality, are authorized for use only on ''predatory'' sea lions.

6. The State will convene an Animal Care Committee (ACC) to provide recommendations on the handling of the sea lions.

a. The ACC membership is (1) to consist of veterinarians, marine mammal caretakers, and Federal and State marine mammal biologists, and (2) to be approved by the Regional Director.

b. The ACC shall review active capture protocols and make recommendations on the procedures and use of any drugs.

c. The ACC shall develop protocols for euthanizing sea lions.

7. ''Predatory'' sea lions that are identified for lethal removal are to be euthanized using protocols developed by the ACC. Nevertheless, the State shall provide sea lions captured for lethal removal to an Indian tribe with treaty rights to harvest marine mammals in the Lake Washington Ship Canal that requests the animals for subsistence use. In that circumstance, the State shall allow the tribe to dispatch the animal in a humane manner that allows for subsistence use.

8. If 15 sea lions are lethally removed under this authorization, lethal removal must cease, and NMFS will immediately reconvene the Task Force for the purpose of evaluating the effectiveness of the measures implemented and making recommendations on further actions.

9. This authorization may be modified or revoked by NMFS based on Task Force recommendations under Condition (8) above.

10. This authorization is valid until June 30, 1997, although it may be modified as needed.

a. On September 1 of each year that this authorization is valid, the State must submit a report on the efforts undertaken to reduce predation, its compliance with the conditions in this authorization, and how the State will comply with the conditions in the following year. The report also must describe progress on longer-term efforts being undertaken by the State to address recovery of winter steelhead.

b. Pursuant to 16 U.S.C. 1389(c)(5), after receipt of the report, NMFS will ask the Task Force to evaluate the State's report and the effectiveness of any lethal take and the alternative actions. NMFS will consider the report, the Task Force recommendations, and the considerations set out in 16 U.S.C. 1389, and may modify or extend the authorization and conditions for the following year, or revoke the authorization for lethal take.

NEPA requires that Federal agencies conduct an environmental analysis of their actions to determine if the actions may affect the environment. Accordingly, NMFS prepared an EA that explores the environmental consequences of four alternatives to modifying the conditions for lethal removal, as a last resort to protect the depressed Lake Washington winter steelhead migrating through the Ballard Locks from predation by California sea

lions. This 1996 EA is a supplement to, and augments, an EA prepared in 1995 that examined non-lethal alternatives to lethal removal. The EA also provides additional information and results of actions taken to protect and enhance the winter steelhead population in 1995.

NMFS has evaluated the environmental consequences of the proposed action and has concluded that it is unlikely to result in any significant impacts on the human environment and therefore has made a finding of no significant impact (FONSI). The EA and FONSI have been prepared in accordance with NEPA and implementing regulations at 40 CFR parts 1500 through 1508 and NOAA guidelines concerning implementation of NEPA found in the NOAA Administrative Order 216–6.

Additional information on steelhead enhancement and management measures being taken by the State of Washington, or a copy of the EA and FONSI is available upon request (see **ADDRESSES**).

Dated: March 13, 1996.

William W. Fox, Jr., Ph.D.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–7184 Filed 3–25–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 031896B]

North Pacific Fishery Management Council; Committee Meeting

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

ACTION: Notice of meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory bodies will meet the week of April 15, 1996, in Anchorage, AK.

DATES: See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: Anchorage Hilton Hotel, 500 W. 3rd Avenue, Anchorage, AK 99501.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION: The Advisory Panel (AP) and the Scientific and Statistical Committee (SSC) will begin on April 15, 1996, at 9:00 a.m. The SSC will conclude their meeting on April 17, and the AP will conclude their meeting by April 18. The Council will begin their meeting on April 17, at 8:00 a.m. and will conclude on April 22, 1996. Other committee and workgroup meetings may be held on short notice during the week; notices will be posted at the meeting site. All meetings are open to the public with the exception of Council executive sessions to discuss personnel, international issues, and litigation. An executive session is tentatively scheduled for 12:00 noon on April 18.

The agenda for the meeting will include the following subjects:

1. Reports from the National Marine Fisheries Service and Alaska Department of Fish and Game on the current status of the fisheries off Alaska, reports on enforcement and international fisheries, and a status report on the reauthorization of the Magnuson Fishery Conservation and Management Act.

2. Initial review of Bering Sea/Aleutian Islands (BSAI) Pacific cod gear allocations, and a report on a ban on night trawling.

3. Reports on crab bycatch issues and initial review of an analysis on crab caps and closures in Bristol Bay.

4. Final action on a third party, pay-as-you-go observer program and review of a Request for Proposals for the third party entity.

5. Final review of an amendment to the sablefish and halibut individual fishery quota (IFQ) program which would increase ''sweep-up'' levels for blocked shares. Other IFQ issues on the agenda include initial review of two other amendments to the program - an increase in the Bering Sea halibut ownership cap, and permitting the use of longline pots for sablefish in the Bering Sea. The IFQ Research Team will give a preliminary report on the 1995 sablefish and halibut IFQ program.

6. Progress report on measures to improve retention and utilization in the groundfish fisheries off Alaska.

7. Review of the Proposed Rule for the groundfish and crab license limitation program, if available.

8. Review consolidated regulations for groundfish and crab and a Proposed Rule to repeal the Salmon Fishery Management Plan (FMP).

9. Under groundfish management, the following subjects will be discussed:

(a) Final review of an amendment to delay the opening of the BSAI pollock ''B'' season;

(b) Initial review of an amendment to overfishing definitions in the groundfish FMPs;

(c) Definition of alternatives for a license limitation program for demersal shelf rockfish in the Gulf of Alaska; and

(d) Review of a request for an experimental fishing permit.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: March 19, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–7183 Filed 3–25–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 031896C]

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

DATES: The Council meeting will be held April 9–12, 1996. It will begin on April 9, at 8 a.m. in a closed session (not open to the public) to discuss litigation. The open session begins at 8:30 a.m. The Council meeting will reconvene at 8 a.m. each day April 10 through April 12. The meetings may continue each day into the evening hours if necessary to complete business.

ADDRESSES: The meetings will be held at the South San Francisco Conference Center, 255 South Airport Boulevard, South San Francisco, CA 94080; telephone: (415) 877–8787.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The following items are on the Council agenda:

A. Call to Order

B. Salmon Management

1. Tentative Adoption of 1996 Ocean Salmon Management Measures for Salmon Technical Team Analysis

2. Clarify Council direction, if necessary

3. National Research Council Report on Pacific Northwest Salmonids

4. Scoping session to identify plan amendment issues and alternatives
5. Identification of stocks not meeting goals for 3 consecutive years
6. Methodology review
7. Final action on 1996 measures

C. Report of the Steering Group

D. Groundfish Management

1. Status of Federal regulations implementing Council actions
2. Status of fisheries and inseason trip limit adjustments
3. Management procedures for the area near Cape Mendocino
4. Revised stock assessment process
5. Long term management of the limited entry fixed gear sablefish fishery
6. Allocation and management of Pacific whiting after 1996
7. Report of the industry meeting on salmon bycatch avoidance in the whiting fishery
8. Effort reduction, data collection, research and other industry recommendations

E. Administrative and Other Matters

1. Report of the Budget Committee
2. Status of legislation
3. Research and data needs
4. Adopt June or August agenda
5. Revise Council operating procedures
6. Regulation consolidation and elimination

Other Meetings

The Salmon Technical Team will meet on March 8–12 as necessary to address salmon management issues related to Council agenda items.

The Salmon Advisory Subpanel will convene on April 8 at 9 a.m. and April 9–12 at 8 a.m. to address salmon management items on the Council agenda.

The Habitat Steering Group will convene on April 8 at 10 a.m. to consider activities affecting the habitat of fish stocks managed by the Council.

The Scientific and Statistical Committee (SSC) will convene on April 8 at 1 p.m. and on April 9 at 8 a.m. in conjunction with the Groundfish Management Team and the Groundfish Advisory Subpanel. The SSC will continue to meet after the joint meeting has ended on April 9. The SSC will meet again on April 10 at 8 a.m. to address scientific issues related to Council agenda items.

The Budget Committee will convene on April 8 at 2 p.m. to review the fiscal year 1996 budget situation.

The Groundfish Management Team will convene on April 8, at 11 a.m. and on April 9 at 8 a.m. in conjunction with the Groundfish Advisory Panel and the SSC. The Groundfish Management Team will meet as necessary after the joint session ends on April 9 and as necessary on April 10 and April 11.

The Groundfish Advisory Subpanel will convene on April 8, at 1 p.m. and on April 9 at 8 a.m. in conjunction with the Groundfish Management Team and the SSC. The Groundfish Advisory Subpanel will continue to meet after the joint session on April 9 and as necessary on April 10 and April 11.

The Legislative Committee will meet on April 8, at 4 p.m. to consider amendments to the Magnuson Fishery Conservation and Management Act.

The Enforcement Consultants will meet on April 9 at 7 p.m. to address enforcement issues related to Council agenda items.

Detailed agendas for the above advisory meetings will be available after March 28, 1996.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Eric W. Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: March 20, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–7284 Filed 3–25–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 031996C]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) will hold its 62nd meeting.

DATES: The meeting will be held April 10–12, 1996, from 8:30 a.m. to 5:00 p.m., each day.

ADDRESSES: The meeting will be held at the Executive Center, 1088 Bishop St., Room 4003, Honolulu, HI; telephone: (808) 539–3000.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI, 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The SSC will discuss and may make recommendations to the Council on the following agenda items:

1. Pelagic fishery issues, including:
(a) An update on the Pelagic Fisheries Research Program,
(b) Longline observer program: Sampling design and 1-year data,
(c) 1995 draft annual report,
(d) Longline bycatch issues,
(e) Swordfish research plans, and
(f) Program planning;
2. Hawaii bottomfish issues, including:
(a) Hawaii Department of Land and Natural Resources progress with a management plan for Main Hawaiian Islands Onaga and Ehu,
(b) Reconsideration of the Northwestern Hawaiian Islands management system,
(c) 1995 draft annual report, and
(d) Program planning;
3. Lobster management, including:
(a) Status of the stocks,
(b) Status of Amendment 9,
(c) NMFS lobster research plan,
(d) Vessel Monitoring System,
(e) 1996 lobster fishing quota,
(f) Request for experimental fishing permit for Kona crab, and
(g) Program planning;
4. Plan for regional assessment of coral reef resources; and
5. Other business as required.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: March 20, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–7285 Filed 3–25–96; 8:45 am]

BILLING CODE 3510–22–F

Patent and Trademark Office

Patent Processing; Updating

ACTION: Proposed collection; correction.

In notice document 96–4906 beginning on page 8261, in the issue of Monday, March 4, 1996, make the following corrections:

On page 8262, the table should read as follows:

Title of form	Form No.	Estimated time for response (hours)	Estimated annual burden hours	Estimated annual responses
Information Disclosure (in Appl'n)	PTO/SB/08	2.0	280,000	140,000
Information Disclosure (in patent)	PTO/SB/42	2.0	2,000	1,000
Statutory Disclaimers	PTO/SB/43	.20	1,500	7,500
Terminal Disclaimers	PTO/SB, 25–26, 62–63.	.20	1,500	7,500
Extensions of Time	PTO/SB, 22–23, 32	.10	11,000	110,000
Petitions to Revive	PTO/SB 61, 61/PCT, 64, 64/PCT.	1.0	4,000	4,000
Express Abandonment	PTO/SB/24	.20	800	4,000
Small Entity	PTO/SB, 09–12	.30	18,000	60,000
Petition for Access	PTO/SB/68	.20	4	20
Power to Inspect/Copy	PTO/SB/67	.20	4,000	10,000
Certificate of Mailing	PTO/SB, 92–93	.10	300,000	30,000
Amendment Transmittal Letter	PTO/SB/21	.20	200,000	40,000
Deposit Acct Order Form	PTO/SB/91	.20	20,000	100,000
Appeal Notice	PTO/SB/31	.20	15,000	3,000

On the same page, in the first column, ''Estimated Number of Respondents: 659,020'' should read ''Estimated Number of Respondents: 517,020.''

Dated: March 19, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–7168 Filed 3–25–96; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

Agency Holding the Meeting: Commodity Futures Trading Commission.

Time and Date: 11:00 a.m., Friday, April 5, 1996.

Place: 1155 21st Street NW., Washington, D.C. 9th Floor Conference Room.

Status: Closed.

Matters to be Considered: Surveillance Matters.

Contact Person for More Information: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–7380 Filed 3–22–96; 10:55 am]

BILLING CODE 6351–01–M

Sunshine Act Meeting

Agency Holding the Meeting: Commodity Futures Trading Commission.

Time and Date: 11:00 a.m., Friday, April 12, 1996.

Place: 1155 21st Street NW., Washington, D.C. 9th Floor Conference Room.

Status: Closed.

Matters to be Considered: Surveillance Matters.

Contact Person for More Information: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–7381 Filed 3–22–96; 10:55 am]

BILLING CODE 6351–01–M

Sunshine Act Meeting

Agency Holding the Meeting: Commodity Futures Trading Commission.

Time and Date: 11:00 a.m., Friday, April 19, 1996.

Place: 1155 21st Street NW., Washington, D.C. 9th Floor Conference Room.

Status: Closed.

Matters to be Considered: Surveillance Matters.

Contact Person for More Information: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–7382 Filed 3–22–96; 10:55 am]

BILLING CODE 6351–01–M

Sunshine Act Meeting

Agency Holding the Meeting: Commodity Futures Trading Commission.

Time and Date: 11:00 a.m., Friday, April 26, 1996.

Place: 1155 21st Street NW., Washington, D.C. 9th Floor Conference Room.

Status: Closed.

Matters to be Considered: Surveillance Matters.

Contact Person for More Information: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–7383 Filed 3–22–96; 10:55 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Image-Based Automatic Target Recognition

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Image-Based Automatic Target Recognition will meet in closed session on April 8–9, 1996 at MIT, Lincoln Laboratory, Lexington, Massachusetts.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will assess the ability of automatic/aided target recognition technology and systems to support important military missions, principally in the near- and mid-term. The Task Force should concentrate on those technologies and systems that use imagery (EO, IR or radar) as their primary input medium.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly

this meeting will be closed to the public.

Dated: March 20, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–7178 Filed 3–25–96; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Information Warfare Defense

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Information Warfare Defense will meet in closed session on April 19, 1996 at Science Applications International Corporation, McLean, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will focus on protection of information interests of national importance through establishment and maintenance of a credible information warfare defensive capability in several areas, including deterrence. This study will be used to assist in analysis of information warfare procedures, processes, and mechanisms, and illuminate future options in defensive information warfare technology and policy.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: March 20, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–7179 Filed 3–25–96; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board FFRDC & UARC Independent Advisory Task Force

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board FFRDC & UARC Independent Advisory Task Force will meet on April 9, 1996 at the Institute for Defense Analyses, 1801 N. Beauregard Street, Alexandria, Virginia, in Closed session from 8:00 a.m.–8:30 a.m. and in Open session from 8:30 a.m.–5:00 p.m.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the closed portion of this meeting the Task Force will receive classified briefings. For further information or if you would like to attend the open session, contact the DSB Secretariat at (703) 695–4157.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly a portion of this meeting will be closed to the public.

Dated: March 20, 1996.

Patricia L. Toppings,

Alternte OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–7180 Filed 3–25–96; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Strategic Mobility

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Strategic Mobility will meet in closed session on April 4–5, 1996 at Science Applications International Corporation, McLean, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will engage in a broad review of strategic mobility under a range of scenarios. The review should include the joint and service processes for planning, executing, protecting, and sustaining force deployments. It should also include the resources and activities that provide command and control, communications and information systems in support of strategic mobility.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: March 20, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–7181 Filed 3–25–96; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 27 & 28 March 1996.

Time of Meeting: 0900–1500.

Place: Orlando, Florida.

Agenda: The Army Science Board (ASB) Summer Study on ''Army Simulation Implementation and Use'' will meet for briefings and discussions regarding the development and application of computer based models and simulations, physics based models and recent technological advances afforded by simulation techniques. These meetings will be closed to the public in accordance with Section 552b(c) of title 5, U.S.C., specifically subparagraph (4) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The proprietary matters to be discussed are so inextricably intertwined so as to preclude opening any portion of these meetings. For further information please contact Michelle Diaz at (703) 695–0781.

Michelle P. Diaz,

Acting Administrative Officer, Army Science Board.

[FR Doc. 96–7340 Filed 3–25–96; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement for the Disposal and Reuse of Naval Weapons Industrial Reserve Plant, Calverton, Long Island, NY

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 as implemented in the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of Navy announces its intent to prepare an Environmental Impact Statement (EIS) for the Disposal and Reuse of Naval Weapons Industrial Reserve Plant (NWIRP), Calverton, Long Island, New York.

The Defense Authorization Act for Fiscal Year 1995 authorizes the Secretary of the Navy to convey the property directly to the Community Development Agency of the Town of Riverhead, New York. The conveyance is subject to the condition that the town use the property for economic redevelopment to replace all or part of the economic activity being lost at the facility. Any part of the facility not conveyed to the Town would be disposed of by the General Services Administration (GSA) in accordance with the Federal Property and Administrative Services Act of 1944.

The Grumman Aerospace Corporation operated a Government Owned/Contractor operated (GOCO) facility on approximately 2,900 acres of the 6,050-acre site until February 1996 when operations ceased. The objective of the EIS is to evaluate the environmental impacts associated with the various reuse alternatives. Environmental issues that will be addressed in the EIS include air quality, water quality, wetland impacts, endangered species impacts, cultural resource impacts, and socioeconomic impacts.

The proposed action to be analyzed in the EIS involves the disposal of land, buildings, and infrastructure for subsequent reuse by the Town of Riverhead. The 6,050-acre site has two aircraft landing runways (7,000 ft and 10,000 ft in length) and buildings with more than 1 million sq. ft of space.

The reuse of NWIRP Calverton has recently been studied by the Town of Riverhead's Joint Planning and Redevelopment Commission and its consultants. The redevelopment/reuse plan, developed by the town's consultants and to be approved by the Riverhead Town Board, will be the basis for the EIS. The proposed reuse, known as the Calverton Business Park, comprises the following uses: theme attraction park(s), hotel/conference center, service retail, golf course, industrial center (2.5 million sq. ft), community park(s), open space, natural areas, aviation use/aircraft maintenance, event grounds, and a commercial/recreation area including a stadium. Two additional alternatives will also be evaluated in the EIS. One reuse alternative will include the construction of a permanent automobile race course incorporating use of one existing runway. Industrial, recreational, and other land uses would be included in this alternative. A third alternative reuse plan will include only residential development on the site limited to residents of 50 years or older. The No Action alternative will also be addressed in the EIS. It is defined as closing NWIRP, cessation of all GOCO activities, and retention of the land as U.S. Government property. The EIS to be prepared by the Navy will address the following known areas of concern: effects of developed at the facility on the natural and socioeconomic environment, effects of future growth on infrastructure and transportation systems, and the effects of reuse on the facility's historic properties. The EIS will also serve as technical support for the National Historic Preservation Act Section 106 consultation process.

The Navy will hold a scoping meeting to receive comment on significant issues that should be addressed in the EIS. The meeting will be held on Wednesday, April 10, 1996, beginning at 7:00 P.M. at the Ramada Inn located at 1830 Route 25 (at exit 72 of the Long Island Expressway) in Riverhead, NY 11901. Navy representatives will make a brief presentation, then members of the public will be provided an opportunity for comments. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed in the EIS. In the interest of time, speakers will be asked to limit their comments to five minutes.

ADDRESSES: Agencies and the public are encouraged to provide written comments in addition to, or in lieu of, oral comments at the scoping meeting. To be most helpful, comments should clearly describe specific issues or topics which the EIS should address. Written comments must be postmarked by May 1, 1996, and should be mailed to: Commanding Officer, Northern Division, Naval Facilities Engineering Commend, 10 Industrial Highway, Lester, Pennsylvania 19113 (Attn: Mr. Robert Ostermueller, Code 202), telephone (610) 595–0759.

Dated: March 21, 1996.

M.D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 96–7249 Filed 3–25–96; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF ENERGY

Notice of Reestablishment of The Secretary of Energy Advisory Board

Pursuant to section 9(a)(2)of the Federal Advisory Committee Act and in accordance with title 41 of the Code of Federal Regulations, section 101–6.1015, and following consultation with the Committee Management Secretariat of the General Services Administration, notice is hereby given that the Secretary of Energy Advisory Board (the Board) has been reestablished for an additional two years.

The Board will continue to provide advice to the Secretary of Energy on the management reforms, research, development, energy, and national security responsibilities, activities, and operations of the Department of Energy.

The Board members are selected to assure well-balanced, geographical representation and on the basis of their professional expertise and diverse experiences. Membership and representation of the Board will continue to be determined in accordance with the requirements of the Federal Advisory Committee Act, section 624(b) of the Department of Energy Organization Act (Pub. L. 95–91), and implementing regulations.

The reestablishment of the Board has been determined to be in the public interest, important and vital to the conduct of the Department's business in connection with the performance of duties established by statute for the Department of Energy. The Board will operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), the Department of Energy Organization Act (Pub. L. 95–91), the General Services Administration Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

Further information regarding this advisory committee can be obtained from Ms. Rachel M. Samuel at (202) 586–3279.

Issued in Washington, D.C. on March 20, 1996.

Rachel M. Samuel,

Deputy Advisory Committee, Management Officer.

[FR Doc. 96–7267 Filed 3–25–96; 8:45 am]

BILLING CODE 6450–01–P

Metal Casting Industrial Advisory Board, Meeting

AGENCY: Department of Energy.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the Metal Casting Industrial Advisory Board meeting.

DATES: Friday, April 19, 1996 8:00 am–5:30 pm.

ADDRESSES: Clarion Suites, 1010 Race Street, Philadelphia, PA 19107.

FOR FURTHER INFORMATION CONTACT: Douglas E. Kaempf, Program Manager,

Department of Energy, Office of Industrial Technologies (EE–23), 1000 Independence Ave. S.W., Washington, D.C. 20585, (202) 586–5264, Fax: (202) 586–3180.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee

The Metal Casting Industrial Advisory Board (MCIAB) serves to provide guidance and oversight of research programs provided under the Metal Casting Competitiveness Research Program and to recommend to the Secretary of Energy new or revised program activities and Metal Casting Research Priorities.

Tentative Agenda

8:00 Sign-In
8:15–9:00 Welcome & Instructions—Douglas Kaempf
9:00–10:00 Cast Metals Coalition Formulation and Structure—Dennis Allen
10:00–10:15 Break
10:15–12:00 New Role of the Metal Casting Industrial Advisory Board How the Board Wishes To Proceed—Douglas Kaempf
12:00–1:00 Lunch (On your own)
1:00–2:00 Changes in Board Membership—Douglas Kaempf
2:00–3:00 Election of New Chairman of the MCIAB—Co-Chairs
3:00–3:15 Break
3:15–5:00 FY 96 Projects Selected by the Cast Metals Coalition—Kaempf/Allen
5:00–5:30 Public Comment and Meeting Adjourned

Public Participation

The meeting is open to the public. The Chairperson of the Board is empowered to conduct the meeting to facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to the agenda items should contact Douglas E. Kaempf at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. Written statements may be filed with the Committee either before or after the meeting.

Transcript

Available for public review and copying at the Freedom of Information Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. between 9:00 AM and 4:00 PM, Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on March 19, 1996.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–7268 Filed 3–25–96; 8:45 am]

BILLING CODE 6450–01–P

Bonneville Power Administration

Notice of Intent To Prepare an Environmental Impact Statement and Notice of Floodplain and Wetlands Involvement for the Watershed Management Program

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of Intent to Prepare an Environmental Impact Statement (EIS), and Notice of Floodplain and Wetlands Involvement.

SUMMARY: This notice announces BPA's intention to prepare an EIS on proposed funding of the planning and implementation of watershed conservation and rehabilitation projects throughout the Columbia River Basin (Basin). This action proposes to mitigate the loss of anadromous and resident fish habitat caused by the construction and operation of Federal hydroelectric projects in the Basin. In accordance with the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act, 16 U.S.C. 839), specific fish mitigation activities that BPA would implement under the program are developed through Pacific Northwest Power Planning Council (Council) procedures and proposed in the Council's Fish and Wildlife Program. Although BPA decisions on these specific actions are often independent of one another, preparation of this EIS recognizes their similarity of impacts, methods of implementation, and subject matter. This action involves land resources planning that may affect floodplains and wetlands throughout the Basin, including various parts of Oregon, Idaho, Montana and Washington. A floodplain/wetland assessment will be included in the EIS being prepared for the proposed project in accordance with the National Environmental Policy Act (NEPA).

BPA invites public comment on the range of actions, alternatives, and impacts to be addressed in the Watershed Conservation Program EIS.

DATES: BPA has established a scoping period during which affected landowners, concerned citizens, special interest groups, local governments, and any other interested parties are invited to comment on the scope of the proposed EIS. Scoping will help BPA ensure that a full range of issues related to this proposal is addressed in the EIS, and also will identify significant or potentially significant impacts that may result from the proposed project. Please send written comments to the address below by May 31, 1996.

When completed, the Draft EIS will be circulated for review and comment, and BPA will hold a public comment meeting for the Draft EIS. BPA will consider and respond to comments received on the Draft EIS in the Final EIS.

ADDRESSES: BPA invites comments and suggestions on the proposed scope of the Draft EIS. Send comment letters and requests to be placed on the project mailing list to the Public Involvement and Information Manager, Bonneville Power Administration—CKP, P.O. Box 12999, Portland, Oregon, 97212. The phone number of the Public Involvement and Information Office is 503–230–3478 in Portland; toll-free 1800–622–4519 outside of Portland. Comment at our internet address at: comment@bpa.gov.

FOR FURTHER INFORMATION, CONTACT: Eric N. Powers—ECN at (503) 230–5823 or Mark Shaw—EWP at (503) 230–5239, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621.

SUPPLEMENTARY INFORMATION:

Proposed Action

BPA proposes to establish standards and guidelines for funding the planning and implementation of watershed conservation and rehabilitation projects throughout the Basin. This action is proposed to mitigate the loss of anadromous and resident fish habitat based on four elements: (1) increase salmon survival in the rivers; (2) improve harvest management; (3) improving hatcheries and production practices; and (4) protect and improve habitat. A primary objective of this action is to implement principles that will be the most cost-effective and efficient means of obtaining fish mitigation goals. General issues the socioeconomic impacts, fish and wildlife management, vegetation management, threatened and endangered species management, cultural resources management, recreation management, and water quality management. Identification of additional issues may result from the public scoping process, and scoping may also eliminate some issues from in-depth analysis. The proposed program standards and guidelines may establish

criteria for implementing specific mitigation actions without further review, or with limited site-specific analysis tiered to the Program EIS.

Process to Date

BPA has funded, over the last several years, a number of small demonstration projects under a ''model'' watershed program. The model watersheds include the Grand Ronde and its subbasins in Oregon, the Tucannon, Pataha, and Asotin in Washington, and the Lemhi, Pahsimeroi, and East Fork Salmon in Idaho. To date, BPA has categorically excluded these model watershed demonstration projects under NEPA. However, with the culmination of planning for many of the model watersheds and potential for expansion of the watershed program to include additional watersheds beyond the model watersheds, BPA has decided to prepare an EIS to discuss the potential cumulative impacts, both positive and negative, of a larger-scope watershed program.

Alternatives Proposed for Consideration

Alternatives to be considered in the BPA Watershed Management Program EIS would include alternative standards and guidelines for each management issue addressed. The EIS will also consider a No Action alternative, *i.e.*, program implementation without defined program-wide standards and guidelines.

Identification of Environmental Issues

The environmental issues associated with fish mitigation activities include changes in land use, vegetation patterns, fish and wildlife populations, recreational opportunities, and water use and quality.

Further information is available from BPA at the address above.

Issued in Portland, Oregon, on March 14, 1996.

Randall W. Hardy,

Administrator and Chief Executive Officer.

[FR Doc. 96–7269 Filed 3–25–96; 8:45 am]

BILLING CODE 6540–01–P

Federal Energy Regulatory Commission

[Docket No. EG96–31–000]

AEP Resources Gippsland Power, L.L.C.; Notice of Surrender of Exempt Wholesale Generator Status

March 20, 1996.

Take notice that on March 15, 1996, pursuant to § 365.7 of the Commission's regulations, 18 CFR 365.7, AEP Resources Gippsland Power, L.L.C. filed notification that it surrenders its status as an exempt wholesale generator under section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended.

Lois D. Cashell,

Secretary.

[FR Doc. 96–7205 Filed 3–25–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–177–000]

Boundary Gas, Inc.; Notice of Proposed Changes in FERC Gas Tariff

March 20, 1996.

Take notice that on March 15, 1996, Boundary Gas, Inc. (Boundary) tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective April 1, 1996:

First Revised Sheet No. 5
First Revised Sheet No. 6
First Revised Sheet No. 7
First Revised Sheet No. 8
First Revised Sheet No. 13
First Revised Sheet No. 22
First Revised Sheet No. 23
First Revised Sheet No. 24

Boundary states that the purpose of this filing is to accommodate the needs of one of its Repurchasers, National Fuel Gas Distribution Corporation (National Fuel), which wishes to receive all of its Boundary volumes at a different delivery point from the one originally specified in Boundary's Phase 2 Gas Sales Agreement, which is incorporated into Boundary's FERC Gas Tariff. No other changes are being made to the tariff, and no other Boundary Repurchaser will be affected by this change.

Boundary states that copies of this filing were served upon all customers and interested state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–7201 Filed 3–25–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–345–001]

Indeck Pepperell Power Associates, Inc.; Notice of Issuance of Order

March 20, 1996.

On November 13, 1995, as completed on December 26, 1995, Indeck Pepperell Power Associates, Inc. (Indeck Pepperell) filed a request for authorization to sell energy and capacity at market-based rates from the Indeck Pepperell Power Plant, a 38 MW cogeneration facility, located in Pepperell, Massachusetts. In their filing, Indeck Pepperell requested certain waivers and authorizations. In particular, Indeck Pepperell requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Indeck Pepperell. On March 19, 1996, the Commission issued an Order On Rehearing Conditionally Accepting For Filing Market-Based Rates, And Granting Requests For Waivers And Authorizations (Order), in the above-docketed proceeding.

The Commission's March 19, 1996 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Indeck Pepperell should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214 (1995).

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, Indeck Pepperell is hereby authorized to issue securities and to assume obligations or liabilities as guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the applicant, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Indeck Pepperell's issuances of securities or assumptions of liabilities.

* * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 18, 1996.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–7199 Filed 3–25–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–326–008 and RP96–128–001]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

March 20, 1996.

Take notice that on March 15, 1996, Natural Gas Pipeline Company of America (Natural) tendered for filing proposed changes in its FERC Gas Tariff, Sixth Revised Volume No. 1, to become effective December 1, 1995 and March 1, 1996.

Natural states that the purpose of this filing is to comply with the Commission's ''Order Accepting Tariff Sheets, Subject to Conditions, and Rejecting Tariff Sheets'' issued February 29, 1996 in Docket Nos. RP95–326–006, *et al.*

Natural requests whatever waivers may be necessary to permit the tariff sheets as submitted to become effective on their indicated effective dates.

Natural states that copies of the filing are being mailed to all parties on the restricted service list in Docket Nos. RP95–326–006, *et al.*

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–7202 Filed 3–25–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–549–000]

Southern Company Services, Inc., Notice of Compliance Filing

March 20, 1996.

Take notice that on January 24, 1996, Southern Company Services, Inc. tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests must be filed on or before March 29, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. 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. 96–7204 Filed 3–25–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL96–25–000, et al.]

Arizona Public Service Company, et al.; Electric Rate and Corporate Regulation Filings

March 19, 1996.

Take notice that the following filings have been made with the Commission:

1. Arizona Public Service Company

[Docket No. EL96–25–000]

Take notice that on March 4, 1996, Arizona Public Service Company tendered for filing additional material to its December 7, 1995, filing in the above-referenced docket.

Comment date: April 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Vitol Gas & Electric, LLC

Docket No. ER94–155–012

On March 12, 1996, Vitol Gas & Electric, LLC filed a notice of succession changing its name from Catex Vitol Electric, L.L.C. to Vitol Gas & Electric LLC.

Comment date: April 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Southern Company Services, Inc.

Docket No. ER95–1266–000

Take notice that on March 14, 1996, Southern Company Services, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: April 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Western Resources, Inc.

Docket No. ER96–591–000

Take notice that on March 14, 1996, Western Resources, Inc. (Western Resources) tendered for filing a revised participation power agreement between Western Resources and the city of Chanute, Kansas. The agreement is proposed to become effective June 1, 1996.

A copy of this filing was served upon the City of Chanute, Kansas and the Kansas Corporation Commission.

Comment date: April 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Western Resources, Inc.

Docket No. ER96–592–000

Take notice that on March 14, 1996, Western Resources, Inc. (Western Resources) tendered for filing a revised participation power agreement with the Oklahoma Municipal Power Authority.

A copy of this filing was served upon the Oklahoma Municipal Power Authority and the Kansas Corporation Commission.

Comment date: April 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Dayton Power & Light Company

Docket Nos. ER96–709–000, ER96–886–000, ER96–887–000, ER96–888–000, ER96–903–000, and ER96–978–000

Take notice that on February 26, 1996, Dayton Power & Light Company tendered for filing amendments in the above-referenced dockets.

Comment date: April 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Duke Power Company

Docket No. ER96–805–000

Take notice that on March 14, 1996, Duke Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: April 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. South Carolina Electric and Gas Company

Docket No. ER96–1085–000

Take notice that on March 14, 1996, South Carolina Electric and Gas Company tendered for filing an amendment in the above-referenced docket.

Comment date: April 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Minnesota Power & Light Company

Docket No. ER96–1209–000

Take notice that on February 28, 1996, Minnesota Power & Light Company tendered for filing signed Service Agreements with the following: Missouri Public Service, a division of UtiliCorp United, Inc., Westplains Energy-Colorado, a division of UtiliCorp United, Inc., and Westplains Energy-Kansas, a division of UtiliCorp United, Inc.

Comment date: April 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Indiana Michigan Power Company

Docket No. ER96–1232–000

Take notice that Indiana Michigan Power Company (I&M) March 1, 1996, tendered for filing with the Commission Facility Request No. 8 to the existing Agreement, dated December 11, 1989 (1989 Agreement), between I&M and Wabash Valley Power Association, Inc. (WVPA). Facility Request No. 8 was negotiated in response to WVPA's request that I&M provide new facilities at an existing 69 kV tap station to be owned by Northeastern REMC (Co-op Name) and operated by I&M known as Northeastern REMC-Aboite Tap Station. The Commission has previously designated the 1989 Agreement as I&M's Rate Schedule FERC No. 81.

As requested by, and for the sole benefit of WVPA, I&M proposes an effective date of April 30, 1996, for Facility Request No. 8. A copy of this filing was served upon WVPA, the Indiana Utility Regulatory Commission, and the Michigan Public Service Commission.

Comment date: April 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Power and Light

Docket No. ER96–1253–000 Company

Take notice that on March 5, 1996, Wisconsin Power and Light Company (WP&L), tendered for filing an Agreement dated February 23, 1996, establishing UtiliCorp United, Inc. as a customer under the terms of WP&L's Point-to-Point Transmission Tariff.

WP&L requests an effective date of February 23, 1996 and accordingly seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: April 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Virginia Electric and Power Company

[Docket No. ER96–1282–000]

Take notice that on March 8, 1996, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between Southern Company Services, Inc. and Virginia Power, dated February 16, 1996, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to Southern Company Services, Inc. under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: April 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Btu Power, Inc.

[Docket No. ER96–1283–000]

Take notice that on March 8, 1996, Btu Power, Inc. (Btu), petitioned the Commission for acceptance of Btu Rate Schedule FERC No. 1, the granting of certain blanket approvals, including the authority to sell electricity at market-based rates, and the waiver of certain Commission regulations. Btu intends to engage in wholesale electric power and energy purchases and sales as a marketer. Btu is not in the business of generating transmitting, or distributing electric power. Btu is a direct wholly-owned subsidiary of Btu Energy, Inc. which is involved in development of non-utility generating facilities and related business ventures in the United States.

Comment date: April 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Northwestern Wisconsin Electric Company

[Docket No. ER96–1284–000]

Take notice that on March 8, 1996, Northwestern Wisconsin Electric Company, tendered for filing proposed changes in its Transmission Use Charge, Rate Schedule FERC No. 2. The proposed changes would decrease revenues from jurisdictional sales by $1,201.66 based on the 12 month period ending April 30, 1996. Northwestern Wisconsin Electric Company is proposing this rate schedule change to more accurately reflect the actual cost of transmitting energy from one utility to another based on current cost data. The service agreement for which this rate is calculated calls for the Transmission Use Charge to be reviewed annually and revised on May 1.

Northwestern Wisconsin Electric Company requests this Rate Schedule Change become effective May 1, 1996.

Copies of this filing have been provided to the respective parties and to the Public Service Commission of Wisconsin.

Comment date: April 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Illinois Power Company

[Docket No. ER96–1285–000]

Take notice that on March 8, 1996, Illinois Power Company (IPC), tendered for filing its proposed changes to its open access transmission tariffs (FERC Electric Tariffs, First Revised Volume No. 3 and Original Volume No. 6) which were accepted by the Commission on October 4, 1995. The proposed changes expand eligibility for service under these tariffs.

The reason stated by IPC for the changes in the Tariffs is to include as Eligible Customers certain retail customers participating in a limited Direct Energy Access Service program.

Comment date: April 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Maine Public Service Company

[Docket No. ER96–1286–000]

Take notice that on March 11, 1996, Maine Public Service Company (Maine Public) filed an executed Service Agreement with LG&E Power Marketing, Inc.

Comment date: April 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. The Detroit Edison Company

[Docket No. ER96–1287–000]

Take notice that on March 11, 1996, The Detroit Edison Company (Detroit),

tendered for filing an Amendment No. 2 to the Agreement for the Lease of a Portion of Generating Capability of Ludington Pumped Storage Hydroelectric Generating Plant by The Detroit Edison Company to the Toledo Edison Company dated April 3, 1995.

Comment date: April 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–7198 Filed 3–25–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER96–807–000, et al.]

Washington Water Power Company, et al.; Electric Rate and Corporate Regulation Filings

March 18, 1996.

Take notice that the following filings have been made with the Commission:

1. Washington Water Power Company

[Docket No. ER96–807–000]

Take notice that on March 13, 1996, Washington Water Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: April 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Delmarva Power & Light Company

[Docket No. ER96–968–000]

Take notice that on February 28, 1996, Delmarva Power & Light Company (DPL) tendered for filing a Certificate of Concurrence by Public Service Electric and Gas Company (PSE&G) to amend and supplement the initial Rate Schedule filed January 30, 1996 in this proceeding. In order to optimize the economic advantages to both DPL and PSE&G, DPL requests the Commission waive its customary notice period and allow the Initial Rate Schedule, as amended and supplemented to become effective on January 31, 1996.

DPL states that a copy of this filing has been sent to PSE&G and will be furnished to the New Jersey Board of Public Utilities, the Delaware Public Service Commission, the Maryland Public Service Commission, and the Virginia State Corporation Commission.

Comment date: April 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Orange & Rockland Utilities, Inc.

[Docket No. ER96–1059–000]

Take notice that on February 29, 1996, Orange & Rockland Utilities, Inc. tendered for filing a letter deleting language from sections in its February 12, 1996, filing in the above-referenced docket.

Comment date: April 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Houston Light & Power Company

[Docket No. ER96–1218–000]

Take notice that on February 29, 1996, as amended March 4, 1996, Houston Lighting & Power Company (HL&P) tendered for filing an executed transmission service agreement (TSA) with Enron Power Marketing Inc. (Enron) for Economy Energy and Emergency Power Transmission Service Under HL&P's FERC Electric Tariff, Original Volume No. 1, for Transmission Service to, From and Over Certain HVDC Interconnections. HL&P has requested an effective date of February 5, 1996.

Copies of the filing were served on Enron and the Public Utility Commission of Texas.

Comment date: April 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. New England Power Company

[Docket No. ER96–1229–000]

Take notice that on March 1, 1996, New England Power Company (NEP) filed an Amendment to the Salem Harbor 3 Unit Contract between NEP and UNITIL Power Corp. (UNITIL). The Amendment resolves questions over the billing of certain coal and oil charges attributed to NEP's change in its method of allocating certain allowable charges to fuel to reflect certain costs passed through to NEP by its affiliate New England Energy Incorporated. Under the Amendment, UNITIL will be refunded approximately $82,000 for allocations attributable to coal and $18,000 for oil. NEP requests an effective date of March 2, 1996.

Comment date: April 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Maine Public Service Company

[Docket No. ER96–1264–000]

Take notice that on March 6, 1996, Maine Public Service Company submitted an agreement under its Umbrella Power Sales tariff.

Comment date: April 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Maine Public Service Company

[Docket No. ER96–1265–000]

Take notice that on March 6, 1996, Maine Public Service Company submitted agreements under its Umbrella Power Sales tariff.

Comment date: April 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Cinergy Services, Inc.

[Docket No. ER96–1266–000]

Take notice that on March 6, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Non-Firm Power Sales Standard Tariff (the Tariff) entered into between Cinergy and the Baltimore Gas and Electric Company.

Cinergy and the Baltimore Gas and Electric Company are requesting an effective date of March 1, 1996.

Comment date: April 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power Corporation

[Docket No. ER96–1267–000]

Take notice that on March 6, 1996, Florida Power Corporation (the Company) tendered for filing revised sheets to wholesale rate schedules under which the Company serves Seminole Electric Cooperative, Florida Municipal Power Agency and Reedy Creek Improvement District. The Company requests that all of these revised sheets be allowed to become effective as of March 6, 1996. The Company requests waiver of the 60-day notice requirement in order to give immediate effect to the commitments made by the Company to its customers.

Comment date: April 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Cinergy Services, Inc.

[Docket No. ER96–1268–000]

Take notice that on March 6, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement

under Cinergy's Non-Firm Power Sales Standard Tariff (the Tariff) entered into between Cinergy and the Wisconsin Power & Light Company.

Cinergy and the Wisconsin Power & Light Company are requesting an effective date of March 6, 1996.

Comment date: April 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Duke Power Company

[Docket No. ER96–1269–000]

Take notice that on March 6, 1996, Duke Power Company (Duke), tendered for filing a Transmission Service Agreement (TSA) between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light company, and UtiliCorp United Inc. (UtiliCorp). Duke states that the TSA sets out the transmission arrangements under which Duke will provide UtiliCorp non-firm transmission service under its Transmission Service Tariff.

Comment date: April 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Duke Power Company

[Docket No. ER96–1270–000]

Take notice that on March 6, 1996, Duke Power Company (Duke), tendered for filing a Transmission Service Agreement (TSA) between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and American Electric Power Service Corporation (AEP). Duke states that the TSA sets out the transmission arrangements under which Duke will provide AEP non-firm transmission service under its Transmission Service Tariff.

Comment date: April 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Duke Power Company

[Docket No. ER96–1271–000]

Take notice that on March 6, 1996, Duke Power Company (Duke), tendered for filing a Transmission Service Agreement (TSA) between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and Illinois Power Company (Illinois). Duke states that the TSA sets out the transmission arrangements under which Duke will provide Illinois non-firm transmission service under its Transmission Service Tariff.

Comment date: April 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Duke Power Company

[Docket No. ER96–1272–000]

Take notice that on March 6, 1996, Duke Power Company (Duke) tendered for filing a Service Agreement for Market Rate (Schedule MR) Sales between Duke and Ohio Edison Company and a Schedule MR Transaction Agreement thereunder.

Comment date: April 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Madison Gas and Electric Company

[Docket No. ER96–1273–000]

Take notice that on March 7, 1996, Madison Gas and Electric Company (MGE), tendered for filing a service agreement with Jpower Inc. under MGE's Power Sales Tariff. MGE requests an effective date 60 days from the filing date.

Comment date: April 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Tucson Electric Power Company

[Docket No. ER96–1274–000]

Take notice that on March 7, 1996, Tucson Electric Power Company (Tucson), tendered for filing a Service Agreement (the Agreement), effective as of March 1, 1996 with Federal Energy Sales Inc. (Federal). The Agreement provides for the sale by Tucson to Federal of economy energy from time to time at negotiated rates in accordance with Service Schedule A of Tucson's Coordination Tariff, Volume 1, Docket No. ER94–1437–000. Tucson requests an effective date of March 1, 1996, and therefore requests all applicable waivers.

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: April 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Ohio Valley Electric Corporation

[Docket No. ER96–1275–000]

Take notice that on March 7, 1996, Ohio Valley Electric Corporation (OVEC), tendered for filing Modification No. 9, dated as of August 17, 1995, to the Inter-Company Power Agreement dated July 10, 1953 among OVEC and certain other utility companies named within that agreement as ''Sponsoring Companies'' (the Inter-Company Power Agreement). The Inter-Company Power Agreement bears the designation ''Ohio Valley Electric Corporation Rate Schedule FPC No. 1–B.''

This filing would amend the Inter-Company Power Agreement to permit the Sponsoring Companies, in the event of an emergency shortage of power and energy at the United States Department of Energy's uranium enrichment facility in Paducah, Kentucky, to release a portion of their entitlement of power and energy to OVEC and thereby make such power available for DOE. The Sponsoring Companies would collect a surcharge for such power equal to their net cost of utilizing higher-cost generation resources or purchasing replacement power to make such power available.

OVEC has requested that the Commission waive the 60-day notice period and allow the changes to become effective as of August 17, 1995.

Copies of the filing were served upon Appalachian Power Company, The Cincinnati Gas & Electric Company, Columbus Southern Power Company, The Dayton Power and Light Company, Indiana Michigan Power Company, Kentucky Utilities Company, Louisville Gas and Electric Company, Monongahela Power Company, Ohio Edison Company, Ohio Power Company, Pennsylvania Power Company, The Potomac Edison Company, Southern Indiana Gas and Electric Company, The Toledo Edison Company, West Penn Power Company, the Utility Regulatory Commission of Indiana, the Public Service Commission of Kentucky, the Public Service Commission of Maryland, the Public Service Commission of Michigan, the Public Utilities Commission of Ohio, the Public Utility Commission of Pennsylvania, the State Corporation Commission of Virginia and the Public Service Commission of West Virginia.

Comment date: April 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Ohio Valley Electric Corporation

[Docket No. ER96–1276–000]

Take notice that on March 7, 1996, Ohio Valley Electric Corporation (OVEC), tendered for filing the Agreement, dated as of August 17, 1995, by and between OVEC and the Tennessee Valley Authority (TVA).

This Agreement would permit OVEC, in the event of an emergency shortage of power and energy, to sell power and energy to TVA. The charge would be based on OVEC's out-of-pocket cost of emergency energy.

OVEC has requested that the Commission waive the 60-day notice period and allow the changes to become effective as of August 17, 1995.

Copies of the filing were served upon The Tennessee Valley Authority and the Public Utilities Commission of Ohio.

Comment date: April 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Northeast Utilities Service Company

[Docket No. ER96–1277–000]

Take notice that on March 7, 1996, Northeast Utilities Service Company (NUSCO), on behalf of Northeast Utilities (NU) System Companies, filed a Service Agreement for firm transmission service to Suncook Energy Corporation under the NU System Companies' Tariff No. 1.

NUSCO requests the Service Agreement be permitted to become effective on March 8, 1996.

Comment date: April 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. South Carolina Electric & Gas Company

[Docket No. ER96–1278–000]

Take notice that on March 7, 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 Enron Power Marketing, Inc. (EPMI).

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 Enron Power Marketing, Inc.

Comment date: April 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. South Carolina Electric & Gas Company

[Docket No. ER96–1279–000]

Take notice that on March 7, 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 City of Tallahassee, Florida.

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 February 9, 1996.

Copies of this filing were served upon City of Tallahassee, Florida.

Comment date: April 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Duke Power Company

[Docket No. ER96–1280–000]

Take notice that on March 7, 1996, Duke Power Company (Duke), tendered for filing a Service Agreement for Market Rate (Schedule MR) Sales between Duke and Koch Power Services, Inc., and a Schedule MR Transaction Short thereunder.

Comment date: April 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Mississippi Power Company

[Docket No. ER96–1281–000]

Take notice that on March 6, 1996, Mississippi Power Company, tendered for filing the correction of a recently discovered typographical error made several years ago in a provision of the Fuel Cost Adjustment Clause of Mississippi's Electric Tariff, First Revised Volume No. 1.

Copies of the filing were served upon all customers receiving service under the tariff, the Mississippi Public Service Commission, and the Mississippi Public Utilities Staff.

Comment date: April 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–7206 Filed 3–25–96; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 11132–000–ME]

Consolidated Hydro Maine, Inc., Notice of Availability of Draft Environmental Assessment

March 20, 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 an original license for the existing unlicensed Eustis Hydroelectric Project, located in Franklin County, Maine, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate environmental protection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1–A, Washington, DC 20426. Please affix ''Eustis Hydroelectric Project No. 11132'' to all comments. For further information, please contact Tom Dean at (202) 219–2778.

Lois D. Cashell,

Secretary.

[FR Doc. 96–7203 Filed 3–25–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–220–000, et al.]

Koch Gateway Pipeline Company, et al.; Natural Gas Certificate Filings

March 18, 1996.

Take notice that the following filings have been made with the Commission:

1. Koch Gateway Pipeline Company

Docket No. CP96–220–000

Take notice that on February 29, 1996, Koch Gateway Pipeline Company (Koch), 600 Travis Street, P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP96–220–000 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 revise an existing meter station and to install a lateral pipeline to increase delivery capacity to Mississippi Power Company (MPC) in Harrison County, Mississippi, under its blanket certificate issued in Docket No. CP82–430–000, 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.

Koch proposes to install approximately 5,377 feet of new twenty-inch pipeline parallel and adjacent to its existing eight-inch pipeline designated as TPL 276–14 which is currently serving MPC's Jack Watson Power Plant. Koch states that the first 2,424 of proposed installation will be located in Koch's existing fee property. While the remaining 2,953 of the proposed installation will be located within an existing right-of-way located entirely within MPC property and easements. Additionally, Koch proposes to install on the twenty-inch line at station 39+88, a four-inch tap to tie-over an existing meter station which serves Reichold Chemical, which is currently served from the existing eight-inch line.

Koch asserts that it is not seeking to abandon the eight-inch line because it will be used as a back-up line in the event that service is interrupted on the twenty-inch line. Koch claims that the lateral line will increase the delivery capacity to MPC from 105 MMcf/d to a proposed peak day capacity of 286 MMcf. Koch notes that the twenty-inch line is needed to meet MPC's immediate needs as well as providing the opportunity to meet MPC's future fuel requirements. The estimated cost for the project is $1,120,000, of which MPC will partially reimburse Koch for the construction costs.

Koch states that MPC is currently being served by a number of brokers and marketers which ship gas on Koch's system. Koch states that MPC will continue to have this option or it may execute a new interruptible transportation agreement pursuant to Koch's ITS Rate Schedule. Koch notes that service provided through the proposed facilities will be within the certificated entitlements of existing shippers which serve MPC or within the entitlements of an executed interruptible agreement if MPC chooses, pursuant to Koch's blanket transportation certificate authorized in Docket No. CP88–6–000. Koch states that it has sufficient capacity to render the proposed service without detriment to its existing customers and its tariff does not prohibit the proposed modifications to the facilities.

Comment date: May 2, 1996, in accordance with Standard Paragraph G at the end of this notice.

2. Transcontinental Gas Pipe Line Corporation; National Fuel Gas Supply Corporation

[Docket No. CP9]

Take notice that on March 8, 1996, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, and National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Street, Buffalo, New York 14203 (jointly referred to as Applicants), filed in Docket No. CP96–238–000, a joint application pursuant to Section 7(c) of the Natural Gas Act (NGA), and Part 157 of the Federal Energy Regulatory Commission's (Commission) regulations, for a certificate of public convenience and necessity authorizing the Applicants to redefine the total top gas storage capacity of the Wharton Storage Field as 16 Bcf, and to increase the base gas of the Wharton Storage Field by 4 Bcf for a total of 14.6 Bcf of base gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that the initial development of the Wharton Storage Field was certificated by Commission order dated January 18, 1963, in Docket No. CP61–284. Further, development of the storage field was authorized by Commission orders dated November 20, 1963, in Docket No. CP64–44; February 4, 1964, in Docket No. CP64–103; and January 24, 1967, in Docket No. CP65–182.

Applicants state that the certificated storage capacity of the Wharton Storage Field was never realized during development, and over the years the rated capacity of the Wharton Storage Field has further deteriorated so that the capacity is now 16 Bcf. Further, Applicants state that remediation programs have been followed to maintain, and at a minimum, to mitigate further reduction in deliverability of top gas storage capacity of the Wharton Storage Field.

Applicants indicate that they have entered into a Revised and Restated Wharton Storage Agreement to reflect the changed physical and operational characteristics of the Wharton Storage Field and to update the Wharton Storage Agreement dated February 7, 1963. Applicants state that, under this agreement, Transco will furnish 3 Bcf of base gas and National Fuel will furnish 1 Bcf of base gas.

Comment date: April 8, 1996, in accordance with Standard Paragraph F at the end of this notice.

3. Northern Natural Gas Company

[Docket No. CP96–246–000]

Take notice that on March 14, 1996, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP96–246–000 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 construct and operate a new delivery point 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 a new tap on Northern's 24-inch A-line, and metering and appurtenance facilities, at its existing measurement yard located in the NE 1/4, Section 18, T3N, R26E, Beaver County, Oklahoma. Northern states that the new delivery point would accommodate natural gas deliveries to Continental Natural Gas Incorporated (CNG) under existing transportation rate schedule and service agreements. Northern explains that the gas would be used for feedstock for CNG's processing plant. It is stated that estimated peak day and annual volumes would amount to 25,000 MMBtu and 6,223,250 MMBtu, respectively. Northern estimates that the total cost to install the delivery point would be $155,000. Northern advises that the facilities would be financed in accordance with the General Terms and Conditions of its FERC Gas Tariff, Fifth Revised Volume No. 1.

Comment date: May 2, 1996, in accordance with Standard Paragraph G at the end of this notice.

4. Northern Natural Gas Company

[Docket No. CP96–247–000]

Take notice that on March 14, 1996, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP96–247–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon, in place, the Zavala Co. No. 2 compressor station in Zavala County, Texas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Northern states that the Zavala Co. No. 2 compressor station, which consists of one 2,250 horsepower unit, is no longer being utilized due to changes in operating conditions which have eliminated the need for this station. Northern further states that its Zavala Co. No. 3 compressor station is currently being utilized to compress the gas instead of the Zavala Co. No. 2 compressor station; therefore, abandonment of the station will not result in the abandonment of service to any of Northern's existing customers or producers.

Comment date: April 8, 1996, in accordance with Standard Paragraph F 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. 96–7200 Filed 3–25–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP96–237–000, et al.]

Williston Basin Interstate Pipeline Company, et al.; Natural Gas Certificate Filings

March 20, 1996.

Take notice that the following filings have been made with the Commission:

1. Williston Basin Interstate Pipeline Company

[Docket No. CP96–237–000]

Take notice that on March 8, 1996, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 300, 200 North Third Street, Bismarck, North Dakota 58501, filed in Docket No. CP96–237–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to utilize two existing taps in South Dakota under Williston Basin's blanket certificate issued in Docket No. CP83–1–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in request on file with the Commission and open to public inspection.

Williston Basin states that Montana-Dakota requested authorization to add an additional residential customer to an existing transmission line tap at Station 391+00 on Williston Basin's 10-inch Ellsworth Air Force Base line in Meade County and to add another residential customer at Station 8368+73 on Williston Basin's 12-inch Black Hills Yellow line in Lawrence County. The estimated volumes to be delivered at each area will be 100 Mcf per year. Williston Basin proposes to utilize these existing residential farm taps to effectuate additional natural gas transportation deliveries to Montana-Dakota for other than right-of-way grantor use.

Williston Basin states that the proposed service will have no significant effect on its peak day or annual requirements and that it has sufficient capacity to accomplish deliveries without detriment or disadvantage to its other customers. Williston Basin also states that the additional delivery points are not prohibited by its tariff and the volumes to be delivered are within the contractual entitlements of the customers.

Comment date: May 6, 1996, in accordance with Standard Paragraph G at the end of this notice.

2. National Fuel Gas Supply Corporation

[Docket No. CP96–243–000]

Take notice that on March 11, 1996, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP96–243–000, 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 perform construction on a sales tap located on National Fuel's T-M170 Line in Clarion County, Pennsylvania. The subject tap renders service to an existing firm transportation customer of National Fuel, National Fuel Gas Distribution Corporation (Distribution). National Fuel makes such request, under its blanket certificate issued in Docket No. CP83–4–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

National Fuel proposes to perform construction on an existing sales tap that provides transportation service to Distribution under National Fuel's EFT Rate Schedule. Specifically, the sales tap on which construction will take place is Station No. T–1218, which presently includes a 4-inch turbine meter and regulators with 11/16-inch single orifices. National Fuel is proposing to replace those facilities with a 6-inch turbine meter and 1-inch double orifices. It is stated that by altering those facilities, the design delivery capacity of the regulators will increase from 45.2 Mcf per hour to about 140 Mcf per hour, and the measurement capacity will increase from 61 Mcf per hour to about 122 Mcf per hour. National Fuel states that the proposed upgrade is necessary to meet the increased demand for gas in the Miola, Pennsylvania area and to provide a more reliable feed to Distribution.

National Fuel states that the volumes to be delivered at the proposed tap will be within the certificated entitlement of Distribution, and that the proposed service will have a minimal impact on National Fuel's peak day and annual deliveries. The project is estimated to cost $7,500.

Comment date: May 6, 1996, in accordance with Standard Paragraph G at the end of this notice.

3. Portland Natural Gas Transmission System

[Docket No. CP96–248–000]

Take notice that on March 14, 1996, Portland Natural Gas Transmission System (PNGTS), 300 Friberg Parkway, Westborough, Massachusetts 01581–5039, filed an application pursuant to Section 3 of the Natural Gas Act, Sections 153.10 through 153.12 of the Commission's regulations, and Executive Order No. 10485, as amended by Executive Order No. 12038 and Secretary of Energy Delegation Order No. 0204–112 for Section 3 authorization and a Presidential Permit to site, construct, operate and maintain pipeline facilities at the United States-Canada International Boundary, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, PNGTS seeks authorization to site, construct, operate and maintain approximately 500 feet of 20-inch pipeline near North Troy, Vermont, commencing at the United States-Canada border and ending at a proposed joint or bend in the pipeline. PNGTS states that its facilities will enable it to meet gas needs in New England.

Comment date: April 10, 1996, in accordance with Standard Paragraph F at the end of this notice.

4. Portland Natural Gas Transmission System

[Docket No. CP96–249–000]

Take notice that on March 14, 1996, Portland Natural Gas Transmission System (PNGTS), 300 Friberg Parkway, Westborough, Massachusetts 01581–5039, filed in Docket No. CP96–249–000, an application, pursuant to Section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the construction and operation of pipeline facilities for the transportation of natural gas on a firm and interruptible basis. PNGTS also seeks a blanket certificate pursuant to 18 CFR Part 157, Subpart F, for the construction, operation, and/or abandonment of certain facilities. Further, PNGTS seeks a blanket certificate pursuant to 18 CFR Part 284, Subpart G for self-implementing transportation authority. These proposals are more fully set forth in the application which is on file with the Commission and open to public inspection.

PNGTS is a general partnership under the laws of the State of Maine. PNGTS's partners are: East Coast Pipeline Company, Gaz Metro Portland Corporation, JMC Portland (Investors) Inc., Natural Gas Development Corporation, TCPL Portland Inc., and Tenneco Portland Corporation.

Specifically, PNGTS proposes to construct and operate approximately 242 miles of 20-inch mainline pipeline extending from the U.S.-Canada border near North Troy, Vermont to Haverhill, Massachusetts; a 3.3-mile, 12-inch lateral from the mainline at Westbrook, Maine to an interconnection with Granite State Gas Transmission, Inc. (Granite State) at Falmouth, Maine; a 1-mile, 12-inch lateral from the mainline at Newington, New Hampshire to Granite State; and four metering facilities. PNGTS states that the estimated cost of the proposed facilities is $271 million and will be project financed. The proposed in-service date of the facilities is November 1, 1998. PNGTS states that its proposed pipeline has a design capacity of 178,000 Mcf per day and that over 94 percent of the project's peak day capacity is subject to long-term binding precedent agreements with four shippers.

PNGTS proposes to offer two types of firm service—365-day transportation (Rate Schedule FT) and 151-day winter transportation (November–March) (Rate Schedule WFT)—and interruptible transportation service. PNGTS states that the rates for its service will be based on a winter design day capacity of 178,000 Mcf per day with costs allocated solely to shippers under Rate Schedules FT and WFT. PNGTS states that the rates will utilize a straight fixed-variable rate design. PNGTS has filed a pro forma tariff containing the terms and conditions for its transportation services.

PNGTS maintains that its project will meet a growing demand for gas in New England; allow Bay State Gas Company and Northern Utilities, Inc. continued access to gas currently transported to them by Granite State through a pipeline under a lease due to expire in April 1998; enhance service on the existing New England infrastructure; and offer a variety of transportation services in response to market demand for flexible services.

Comment date: April 10, 1996, in accordance with Standard Paragraph F at the end of this notice.

5. Northwest Pipeline Corporation

[Docket No. CP96–252–000]

Take notice that on March 15, 1996, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP96–252–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon obsolete metering facilities and to construct and operate modified metering facilities at a new location for the Echo Lake Meter Station located in Snohomish County, Washington, 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 which is on file with the Commission and open to public inspection.

Northwest proposes to abandon, by removal, the existing obsolete facilities and to construct and operate modified metering facilities at a new meter station site approximately 125 feet from the current location.

Northwest states that the design capacity of the new meter station would increase from 700 Dth per day to approximately 1,336 Dth per day at 150 psig.

The estimated total cost of the abandonment and construction project is stated to be approximately $209,960.

Comment date: May 6, 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, NE., Washington, DC 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. 96–7227 Filed 3–25–96; 8:45 am]

BILLING CODE 6717–01–P

Office of Hearings and Appeals

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Proposed Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy announces revised proposed procedures for disbursement of $48,307.13 of crude oil overcharge funds obtained by the DOE from Texas American Oil Corporation (Texas American), Case No. VEF–0019. The OHA has determined that these funds, plus accrued interest, be distributed as direct restitution to individual claimants who were injured by crude oil overcharges.

DATES AND ADDRESSES: Comments must be filed in duplicate on or before April 25, 1996, and should be addressed to the Office of Hearings and Appeals, 1000 Independence Ave., SW, Washington, DC 20585–0107. All comments should conspicuously display a reference to Case No. VEF–0019.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Ave., SW, Washington, DC 20585–0107, Telephone No. (202) 586–2860.

SUPPLEMENTARY INFORMATION: In accordance with 10 C.F.R. § 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set forth below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute $48,307.13 (plus accrued interest) remitted to the DOE by Texas American. The DOE is currently holding these funds in an interest-bearing escrow account pending distribution.

This Proposed Decision revises a portion of a previous Proposed Decision that was issued on January 16, 1996. *See Brio Petroleum, Inc.,* Case Nos. VEF–0017 *et al.,* 61 Fed. Reg. 1919 (January 24, 1996). In the January 16 Proposed Decision, the OHA proposed to distribute the funds obtained from Texas American and four other firms in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 Fed. Reg. 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are divided among the federal government, the states, and injured purchasers of refined petroleum products. In accordance with the MSRP, the January 16 Proposed Decision tentatively reserved 20 percent of the funds received from Texas American and the other four firms for direct restitution to injured claimants. In the present Proposed Decision, which involves only Texas American, the OHA has tentatively decided that all of the crude oil overcharge funds obtained from the bankrupt estate of Texas American should be reserved for individual claimants. This is in accordance with *Texas American Oil Corp.* v. *DOE,* 44 F.3d 1557 (Fed. Cir. 1995) (en banc), in which the United States Court of Appeals for the Federal Circuit held that the DOE's claim in the Texas American bankruptcy proceeding on behalf of individual claimants should have a higher priority than its claim on behalf of the states and federal government. Pursuant to that decision, the bankruptcy court distributed to the DOE an amount equivalent to only 20 percent of its claim in the Texas American bankruptcy proceeding.

The remainder of the Proposed Decision is unchanged from the January 16 Proposed Decision. We propose that refunds to eligible purchasers be based on the volume of products that they purchased during the price control period and the extent to which they can demonstrate injury. The proposed volumetric refund amount is $0.0016 per gallon.

Because the June 30, 1995 deadline for crude oil refund applications has passed, we propose not to accept any new applications for refund in this proceeding. As we state in the Proposed Decision, the Texas American funds will be added to the general crude oil overcharge pool for direct restitution to claimants that have filed timely applications.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the Federal Register, and should be sent to the address set forth in the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 p.m. to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Ave., SW, Washington, DC 20585–0107.

Dated: March 14, 1996.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Case: Texas American Oil Corporation
Date of Filing: September 1, 1995
Case Number: VEF–0019

On January 16, 1996 the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) issued a Proposed Decision and Order (PDO) that tentatively established refund procedures for the distribution of crude oil overcharge funds obtained from Texas American Oil Corporation (Texas American) and four other firms. *Brio Petroleum, Inc.,* Case Nos. VEF–0017 *et al.,* 61 Fed. Reg. 1919 (January 24, 1996). In accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases (MSRP), 51 Fed. Reg. 27899 (August 4, 1989), the PDO proposed that 40 percent of the funds be disbursed to the federal government, another 40 percent be disbursed to the states, and the remaining 20 percent be reserved for applicants who file claims showing that they were injured by crude oil overcharges. It has recently come to our attention that the circumstances under which the DOE obtained the Texas

American funds require that the funds be disbursed in a manner different than that proposed in the PDO. Accordingly, we are issuing a new PDO with respect to the Texas American funds.

Background

On September 19, 1988, the OHA issued a Remedial Order (RO) that found that Texas American had violated 10 C.F.R. § 211.67(e)(2) by receiving excessive small refiner bias benefits under the DOE's Entitlements Program. *Texas American Oil Corp.*, 17 DOE ¶ 83, 017 (1988). However, Texas American had filed a petition in bankruptcy on July 2, 1987, and its bankruptcy proceeding was still pending when the RO was issued. The trustee-in-bankruptcy approved the DOE's claim in the amount of $241,535.67, but classified it as a non-pecuniary loss in accordance with Section 726(a)(4) of the Bankruptcy Code and Class 9 of the Plan of Liquidation.[1] Since Class 9 claims were inferior to Class 7 claims, and there were insufficient assets to satisfy any Class 9 claim, or to satisfy fully the Class 7 claims, the effect of the trustee's determination was to preclude the DOE from receiving any compensation from Texas American's estate.

The DOE argued before the Bankruptcy Court that the trustee's determination was erroneous on the grounds that its claim was for restitution and therefore was a Class 7 claim. The Bankruptcy Court, however, rejected the DOE's position and held that Class 9 was the proper classification since the DOE's claim was not for actual pecuniary loss suffered by the holder of the claim. *In re Texas American Oil Corp.*, No. 387–33522–SAF–11 (Bankr. N.D. Tex. Mar. 5, 1992). This decision was reversed by the U.S. District Court which, relying on a prior decision of the Temporary Emergency Court of Appeals (TECA), held that a DOE claim under Section 209 of the Economic Stabilization of 1970 (ESA), 12 U.S.C. § 1904 note, was properly placed in the same class and priority as the general unsecured claims of other creditors. *Texas American Oil Corp.* v. *DOE,* No. 3:92–CV–1146–G (N.D. Tex. Sept. 14, 1992) (citing *DOE* v. *West Texas Marketing Corp.,* 763 F.2d 1411 (Temp. Emer. Ct. App. 1985) (*West Texas*)). This decision was in turn reversed by the United States Court of Appeals for the Federal Circuit, which held that the DOE's claim in the Texas American bankruptcy proceeding should be bifurcated, with the portion claimed on behalf of individual persons who suffered actual injury to be classified in Class 7 of the Plan of Liquidation and portion to be paid to the federal and statement governments to be classified in Class 9. *Texas American Oil Corp.* v. *DOE,* 44 F.3rd 1557 (Fed. Cir. 1995) (en banc). On remand, the Bankruptcy Court implemented the Federal Circuit's decision by distributing the 20 percent of DOE's liquidated claim ($48,307.13) that fell within Class 7 to DOE and the remaining 80 percent ($193,228.53) to the other Class 7 creditors. *In re Texas American Oil Corp.,* NO. 387–33522–SAF–11 (Bankr. N.D. Tex. April 12, 1995). The funds that the DOE received from Texas American were deposited in an interest-bearing escrow account maintained by the Department of the Treasury.[2]

In accordance with 10 C.F.R. Part 205, Subpart V, on September 1, 1995, the Office of General Counsel, Regulatory Litigation (OGC) (formerly the Economic Regulatory Administration) filed a Petition for the Implementation of Special Refund Procedures that requested OHA to formulate and implement procedures to distribute the Texas American funds. In the PDO, we tentatively granted the petition, stating that we intended to implement a Subpart V proceeding to distribute the funds to individual claimants and state and federal governments in accordance with the MSRP. The following section of this Proposed Decision sets forth our revised tentative plan to distribute these funds.

Proposed Refund Procedures

We propose to distribute the funds received from Texas American (and accrued interest on those funds) solely to individual claimants in the DOE's crude oil refund proceeding. This sui generis proposal results from the unique circumstances under which these funds were obtained. While the *Texas American* v. *DOE* decision is contrary to the position of the DOE that had been upheld in the *West Texas* case[3] we are constrained by the Federal Circuit's decision to use the funds received from Texas American solely for direct restitutionary purposes. Moreover, as indicated above, the Texas American Bankruptcy Court, in accordance with the Federal Circuit's determination, distributed to the DOE only 20 percent of its liquidated claim, an amount equivalent to the portion of crude oil overcharge funds that we have consistently reserved for individual claimants under the MSRP.

Except for the manner in which the funds will be allocated, we propose to follow the procedures set forth in the initial PDO and adopted in prior refund proceedings involving crude oil overcharge funds. Thus, claimants will be required to (i) document their purchase volumes of petroleum products during the August 19, 1973—January 27, 1981 crude oil price control period, and (ii) prove that they were injured by the alleged crude oil overcharges. Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations will be presumed to have been injured by Texas American's crude oil overcharges.

In order to receive a refund, end-users will not need to submit any further evidence of injury beyond the volume of petroleum products purchased during the price control period. *See City of Columbus, Georgia* 16 DOE § 85,550 (1987). We also proposed to base refunds to claimants on a volumetric amount that is currently $0.0016 per gallon. *See* 60 Fed. Reg. 15562 (March 24, 1995).

An applicant who has executed and submitted a valid waiver pursuant to one of the escrows established by the Final Stripper Well Settlement Agreement will be considered to have waived its rights to apply for a crude oil refund under Subpart V. *See, e.g., Mid-America Dairymen, Inc.,* v. *Herrington,* 878 F.2d 1448 (Temp Emer. Ct. App. 1989); *see also Hoechst Celanese Chemical,* 25 DOE ¶85,066 (1996). Because the June 30 1995 deadline for crude oil refund applications has

[1] Section 726(a)(4) places non-pecuniary loss claims in the forth priority in the distribution of a bankrupt estate:

11 U.S.C. § 726. Distribution of property of the estate

* * * * *

(a)(4) forth, in payment of any allowed claim, whether secured or unsecured, for any fine, penalty, or forfeiture, or for multiple, exemplary, or punitive damages, arising before the earlier of the order for relief or the appointment of trustee, to the extent that such fine, penalty, forfeiture, or damages are not compensation for actual pecuniary loss suffered by the holder of such claim[.]

Class 7 (Unsecured Claims) consisted of allowed claims of unsecured creditors, while Class 9 (Non-Pecuniary Loss) consisted of ''Allowed Claims for any fine, penalty or forfeiture, or for multiple, exemplary, or punitive damages, as further described in 11 U.S.C. § 726(a)(4).'' Texas American Bankruptcy Committee Plan of Liquidation §§ 3.07, 3.09.

[2] As of February 29, 1996, the account contained $50,596.54, consisting of $48,307.13 principal and $2,289.41 interest.

[3] The Federal Circuit in *Texas American* v. *Doe* ascribed its unwillingness to follow the *West Texas* decision to judicial statutory, and related policy changes that had occurred since the issuance of that decision. The Federal Circuit also specifically overruled TECA's ruling that a DOE bankruptcy claim under the ESA to be paid to the federal and state governments on behalf of their citizen was for restitution and not for a penalty.

passed, we propose not to accept any new applications. *See Western Asphalt Service*, 25 DOE ¶85,047 (1995). Instead, these funds will be added to the general crude oil overcharge pool used for direct restitution.

Before taking the action proposed in this Proposed Decision, we intend to publicize our proposal and solicit comments from interested parties. Comments regarding the tentative distribution process set forth in this Proposed Decision and Order should be filed with the OHA within 30 days of its publication in the Federal Register.

It is therefore ordered that:

The refund amount remitted to the Department of Energy by Texas American Oil Corporation pursuant to the Order of the United States Bankruptcy Court for the Northern District of Texas signed on April 12, 1995, will be distributed in accordance with the foregoing Decision.

[FR Doc. 96–7270 Filed 3–25–96; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5447–3]

Agency Information Collection Activities

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 proposed and/or continuing Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collections as described below.

DATES: Comments must be submitted on or before May 28, 1996.

ADDRESSES: U. S. Environmental Protection Agency, 401 M Street SW, Mail code 2223A OECA/OC/METD, Washington, D.C. 20460. A copy of these ICR's may be obtained without charge from Sandy Farmer (202) 260–2740. This information may also be acquired electronically through the Enviroene Bulletin Board, 703–908–2092 or the Enviroene WWW/Internet Address, http//wastenot.inel.gov./envirosense/. All responses and comments will be collected regularly from Enviroene.

FOR FURTHER INFORMATION CONTACT: NSPS subpart D and NSPS subpart Da, Ted Coopwood, (202) 564–7058 FAX (202) 564–0050 or Chris Oh, (202) 564–7004; NSPS subpart BB, Maria DiBiase Eisemann at (202) 564–7016, FAX (202) 564–0050, NESHAP subpart N, NSPS subpart CC and NSPS subpart HH, Scott Throwe at (202) 564–7013, FAX (202) 564–0050; NSPS subpart MM, Suzanne Childress at (202) 564–7018, FAX (202) 564–0050, NSPS subpart RR, and Arsenic in Wood Preserving, Seth Heminway, (202) 564–7017, fax: (202) 564–0050, E-mail: Heminway.Seth@ EPAMAIL.EPA.GOV.; NSPS subpart SS, NSPS subpart TT, and NSPS subpart WW, Gregory R. Waldrip, 202–564–7024 (telephone)/202–564–0050 (facsimile)/ waldrip.gregory@epamail.epa.gov (Email); NSPS subpart GGG, and NESHAP subpart M, Tom Ripp (202) 564–7003; NSPS subpart HHH, Belinda Breidenbach, (202) 564–7022, fax (202) 564–0050; NSPS Subparts III and NNN, Jeffery KenKnight at (202) 564–7033 or via E-mail (KENKNIGHT.JEFFERY@ EPAMAIL.EPA.GOV); NSPS subpart KKK/LLL, Dan Chadwick, (202) 564–7054, FAX (202) 564–0050; NESHAP subpart E, Jane M. Engert, tel: (202) 564–5021; FAX: (202) 564–0050; e-mail: engert.jane@epamail.epa.gov; MACT subpart L, Maria Malave at (202) 564–7027 or via e-mail (MALAVE.MARIA@ EPAMAIL.EPA.GOV.) or send a fax to (202) 564–0050; MACT NESHAP subpart M, Karin Leff at (202) 564–7068.

SUPPLEMENTARY INFORMATION:

NSPS Subpart D; Fossil-Fuel-Fired Steam Generators

Affected entities: Entities potentially affected by this action are those fossil-fuel-fired Steam Generators for which construction is commenced after August 17, 1971.

Title: New Source Performance Standards (NSPS) for Fossil-Fuel-Fired Steam Generators for Which Construction is Commenced after August 17, 1971 (Subpart D)—Information Requirements (EPA ICR No. 1052.04; OMB No, 2060–0026). This is a request for extension of a currently approved information collection.

Abstract: Owners or operators of fossil-fuel-fired steam generating units which is capable of combusting more than 73 megawatts heat input of fossil fuel and is not covered under Subpart Da, must provide EPA, or the delegated State regulatory authority with the following one-time-only reports (specified in 40 CFR 60.7): Notifications of the anticipated and actual date of start up, notification of the date of construction or reconstruction, notification of any physical or operational changes to an existing facility which may increase the emission rate of any regulated air pollutant, notification of the date upon which demonstration of the continuous monitoring system performance commences, notification of the date of the initial performance test, and results of the performance test.

Owners and operators are also required to maintain records of the occurrence and duration of any start up, shutdown, or malfunction in the operation of an effected facility, or malfunction in the operation of the air pollution control device, or any periods during which the monitoring system is inoperative. These notifications, reports, and records are required in general of all sources subject to NSPS.

In addition to reporting and recordkeeping requirements, facilities subject to this subpart must install, calibrate, maintain, and operate a continuous monitoring system (CMS) to monitor SO_2, NO_X and opacity (specified in 40 CFR 60.45), and must notify EPA or the State regulatory authority of the date upon which demonstration of the CMS performance commences. Owners or operators must submit quarterly reports indicating whether compliance was achieved, and their assessment of monitoring system performance (specified in 40 CFR 60.7). The notifications and reports enable EPA or the delegated State regulatory authority to determine that best demonstration technology is installed and properly operated and maintained and to schedule inspections.

To ensure compliance with these standards, the required records and reports are necessary to enable the Administrator: (1) To identify new, modified, or reconstructed sources subject to the standard; (2) to ensure that the emission limits are being achieved; and (3) to ensure that emission reduction systems are being operated and maintained properly. In the absence of such information collection requirements, enforcement personnel would be unable to determine whether standards are being met on a continuous basis, as required by the Clean Air Act and in accordance with any applicable permit.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

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 Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry for the currently approved 1992 Information Collection Request (ICR). Where applicable, the Agency identified specific tasks and made assumptions, while being consistent with the concept of burden under the Paper Reduction Act.

The estimate was based on the assumption that there would be no new effected facilities because new utility boilers constructed after September 18, 1978 are subject to Subpart Da, and boilers constructed after June 19, 1986 are subject to Subpart Db. Approximately 660 sources are currently subject to the standard. For the performance test , it was estimated that it would take: 3440 person-hours to gather the information to write the initial reports and to conduct the initial performance tests. However, there are no new sources. For the 660 sources subject, it was estimated that it would take: 2640 person-hours to fill out quarterly and semiannual emission reports and 60,225 person-hours to check, maintain, and operate continuous emission monitors (assuming a source operates 365 days per year).

The average annual burden to industry over the past three year period from recordkeeping and reporting requirements had been estimated at 62,865 person-hours. The respondents costs was calculated on the basis of $14.50 plus 110 percent overhead. The average annual burden to industry over the past three years was estimated to be $1,914,236.

This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

NSPS Subpart Da; Electric Utility Steam Generating Units

Affected entities: Entities potentially affected by this action are those Electric Utility Steam Generating Units for which construction is commenced after September 18, 1978.

Title: New Source Performance Standards (NSPS) for Electric Utility Steam Generating Units (Subpart Da)—Information Requirements (EPA ICR No. 1053.04; OMB No. 2060–0023). This is a request for extension of a currently approved information collection.

Abstract: Owners or operators of Electric Utility Steam Generating Units capable of combusting more than 73 megawatts heat input of fossil fuel must provide EPA, or the delegated State regulatory authority with the following one-time-only reports: Notifications of the anticipated and actual date of start up, notification of the date of construction or reconstruction, notification of any physical or operational changes to an existing facility which may increase the emission rate of any regulated air pollutant, notification of the date upon which demonstration of the continuous monitoring system performance commences, notification of the date of the initial performance test, and results of the performance test.

Owners and operators are also required to maintain records of the occurrence and duration of any start up, shutdown, or malfunction in the operation of an effected facility, or malfunction in the operation of the air pollution control device, or any periods during which the monitoring system is inoperative. These notifications, reports, and records are required in general of all sources subject to NSPS.

In addition to reporting and recordkeeping requirements specified in 40 CFR 60.7, facilities subject to this subpart must install, calibrate, maintain, and operate a continuous monitoring system (CMS) to monitor SO_2, NO_x and opacity (specified in 40 CFR 60.7 and 40 CFR 60.47a), and must notify EPA or the State regulatory authority of the date upon which demonstration of the CMS performance commences (specified in 40 CFR 60.47a). Owners or operators must submit quarterly reports indicating whether compliance was achieved, and their assessment of monitoring system performance (specified in 40 CFR 60.49a). The notifications and reports enable EPA or the delegated State regulatory authority to determine that best demonstration technology is installed and properly operated and maintained and to schedule inspections.

To ensure compliance with these standards, the required records and reports are necessary to enable the Administrator: (1) To identify new, modified, or reconstructed sources subject to the standard; (2) to ensure that the emission limits are being achieved; and (3) to ensure that emission reduction systems are being operated and maintained properly. In the absence of such information collection requirements, enforcement personnel would be unable to determine whether standards are being met on a continuous basis, as required by the Clean Air Act and in accordance with any applicable permit. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

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 Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry for the currently approved 1992 Information Collection Request (ICR). Where applicable, the Agency identified specific tasks and made assumptions, while being consistent with the concept of burden under the Paper Reduction Act.

The estimate was based on the assumption that there would be seven new effected facilities each year and

there was an average of 71 sources in existence for the three years covered by the ICR. For the new sources, it was estimated that it would take: one person-hours to read the instructions, 502 person-hours to gather the information to write the initial reports and 171 person-hours to conduct the initial performance tests and reference method 9 test (assuming that 20% of the tests must be repeated). For all sources, it was estimated that it would take : 32 person-hours to fill out quarterly and semiannual emission reports and 182 person-hours to check, maintain, and operate continuous emission monitors (assuming a source operates 365 days per year).

The average annual burden to industry over the past three year period from recordkeeping and reporting requirements had been estimated at 19,597 person-hours. The respondents costs was calculated on the basis of $14.50 plus 110 percent overhead. The average annual burden to industry over the past three years was estimated to be $596,733.

This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

NSPS subpart BB: Kraft Pulp Mills

Affected entities: Entities potentially affected by this action are those which are subject to New Source Performance Standards (NSPS) Subpart BB, Standards of Performance for Kraft Pulp Mills.

Title: NSPS Subpart BB, Standards of Performance for Kraft Pulp Mills. OMB Control Number: 2060–0021, Expiration date: September 30, 1996.

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with Subpart BB, New Source Performance Standards for Kraft Pulp Mills. In the Administrator's judgement, particulate matter and Total Reduced Sulfur (TRS) from kraft pulp mills cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, New Source Performance Standards have been promulgated for this source category as required under Section 111 of the Clean Air Act.

The control of emissions of particulate matter and TRS requires not only the installation of properly designed equipment, but also the proper operation and maintenance of that equipment. These standards rely on the capture of pollutants vented to a control device.

Owners or operators of kraft pulp mills subject to NSPS Subpart BB are required to make initial notifications for construction, startup, and performance testing. They must also report the results of a performance test, and demonstration of a continuous monitoring system if applicable. After the initial recordkeeping and reporting requirements, semiannual excess emission reports are required.

Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or malfunction in the operation of the air pollution control device, or any periods during which the monitoring system is inoperative. These notifications, reports and records are required in general, of all sources subject to NSPS.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

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: At the writing of the previous ICR there were 65 sources currently subject to the standards. It is estimated that 2 additional sources per year will become subject to the standard. The current ICR estimates average annual burden to the industry to be 14,996 person hours. The respondent costs have been calculated on the basis of $14.50 per hour plus 110 percent overhead rate. The current ICR also estimates the average annual burden to the industry is $456,297.

The following is a breakdown of burden used in the ICR. Burden is calculated as two hours for respondents to write the reports for; notification of construction or reconstruction, notification of physical or operational changes, notification of anticipated startup, notification of actual startup, notification of initial performance test, notification of demonstration of CMS. Initial performance tests are allocated 370 burden hours. It is assumed that 20% of all affected facilities will have to repeat performance tests. The ICR allocates four hours for Method 9.

The recordkeeping burden is estimated to be 30 minutes to enter records of operating parameters. It is assumed that the plant will operate 350 days a year, therefore, this information will be recorded 350 times a year. Sources which have excess emission are required to submit excess emission reports. These reports are allocated 16 burden hours with an average of 2 reports per year. There is no additional third party burden relevant to this ICR.

These estimates include the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

NSPS Subpart CC: Glass Manufacturing Plants

Affected entities: Entities potentially affected by this action are those which are subject to New Source Performance Standards (NSPS) Subpart CC, Standards of Performance for Glass Manufacturing Plants.

Title: NSPS Subpart CC, Standards of Performance for Glass Manufacturing Plants. OMB Control Number: 2060–0054, Expiration date: August 31, 1996

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with Subpart CC, New Source Performance Standards for Glass Manufacturing Plants. This information notifies the Agency when a source becomes subject to the regulations, and

informs the Agency that the source is in compliance when it begins operation. In the Administrator's judgement, particulate matter from glass manufacturing plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, New Source Performance Standards have been promulgated for this source category as required under Section 111 of the Clean Air Act.

The control of emissions of particulate matter requires not only the installation of properly designed equipment, but also the proper operation and maintenance of that equipment. These standards rely on the capture of pollutants vented to a control device.

Owners or operators of glass manufacturing plants subject to NSPS Subpart CC are required to make initial notifications for construction, startup, and performance testing. They must also report the results of a performance test, and demonstration of a continuous monitoring system if applicable. After the initial recordkeeping and reporting requirements, semiannual excess emission reports are required but only from sources with modified processes. It is estimated that seventy five percent of sources will have modified processes.

Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or malfunction in the operation of the air pollution control device, or any periods during which the monitoring system is inoperative. These notifications, reports and records are required in general, of all sources subject to NSPS.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

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: At the writing of the previous ICR there were 25 sources currently subject to the standards. It is estimated that 1.7 additional sources per year will become subject to the standard. The current ICR estimates average burden to the industry to be 2212 person hours. The respondent costs have been calculated on the basis of $14.50 per hour plus 110 percent overhead rate. The current ICR also estimates the average annual burden to the industry is $67,369.

The following is a breakdown of burden used in the ICR. Burden is calculated as two hours for respondents to write the reports for; notification of construction or reconstruction, notification of physical or operational changes, notification of anticipated startup, notification of actual startup, notification of initial performance test, notification of demonstration of COM. Initial performance tests are allocated 160 burden hours. It is assumed that 20% of all affected facilities will have to repeat performance tests. Sources which have modified processes are required to submit semiannual excess emission reports. Excess emission reports are allocated 8 burden hours and 2 reports per year.

The recordkeeping burden is estimated to be 15 minutes to enter records of operating parameters. It is assumed that the plant will operate 250 days a year, therefore, this information will be recorded 250 times a year. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

NSPS Subpart HH: Lime Manufacturing Plants

Affected entities: Entities potentially affected by this action are those which are subject to New Source Performance Standards (NSPS) Subpart HH, Standards of Performance for Lime Manufacturing Plants.

Title: NSPS Subpart HH, Standards of Performance for Lime Manufacturing Plants. OMB Control Number: 2060–0063, Expiration date: October 31, 1996.

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with Subpart HH, New Source Performance Standards for Lime Manufacturing Plants. In the Administrator's judgement, particulate matter from lime manufacturing plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, New Source Performance Standards have been promulgated for this source category as required under Section 111 of the Clean Air Act.

The control of emissions of particulate matter requires not only the installation of properly designed equipment, but also the proper operation and maintenance of that equipment. These standards rely on the capture of pollutants vented to a control device.

Owners or operators of lime manufacturing plants subject to NSPS Subpart HH are required to make initial notifications for construction, startup, and performance testing. They must also report the results of a performance test, and demonstration of a continuous monitoring system if applicable. After the initial recordkeeping and reporting requirements, semiannual excess emission reports are required.

Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or malfunction in the operation of the air pollution control device, or any periods during which the monitoring system is inoperative. These notifications, reports and records are required in general, of all sources subject to NSPS.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

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: At the writing of the previous ICR there were 32 sources currently subject to the standards. It is estimated that 2 additional sources per year will become subject to the standard. The current ICR estimates average annual burden to the industry to be 3031 person hours. The respondent costs have been calculated on the basis of $14.50 per hour plus 110 percent overhead rate. The current ICR also estimates the average annual burden to the industry is $92,297.

The following is a breakdown of burden used in the ICR. Burden is calculated as two hours for respondents to write the reports for; notification of construction or reconstruction, notification of physical or operational changes, notification of anticipated startup, notification of actual startup, notification of initial performance test, notification of demonstration of COM. Initial performance tests are allocated 280 burden hours. It is assumed that 20% of all affected facilities will have to repeat performance tests. The ICR allocates four hours for Method 9. These are all one time only burdens.

The recordkeeping burden is estimated to be 15 minutes to enter records of operating parameters. It is assumed that the plant will operate 250 days a year, therefore, this information will be recorded 250 times a year. Sources which have excess emission are required to submit excess emission reports. These reports are allocated 8 burden hours with an average of 2 reports per year. There is no additional third party burden relevant to this ICR.

These estimates include the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

NSPS Subpart MM; Automobile and Light Duty Truck Surface Coating Operations

Affected entities: Entities potentially affected by this action are those which are subject to New Source Performance Standards (NSPS) Subpart MM, Standards of Performance for Automobile and Light Duty Truck Surface Coating Operations.

Title: NSPS Subpart MM, Standards of Performance for Automobile and Light Duty Truck Surface Coating Operations. OMB Control Number: 2060–0034, Expiration Date: October 31, 1996.

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with Subpart MM, New Source Performance Standards for Automobile and Light Duty Truck Surface Coating Operations. In the Administrator's judgement, VOC emissions from auto mobile and light duty truck surface coating operations cause or contribute to air pollution that may reasonably endanger public health or welfare. Therefore, New Source Performance Standards have been promulgated for this source category as required under Section 111 of the Clean Air Act.

The control of emissions of VOC requires not only the installation of properly designed equipment, but also the proper operation and maintenance of that equipment. These standards rely on the capture of pollutants vented to a control device.

Owners or operators of surface coating operations for automobile and light duty trucks subject to NSPS Subpart MM are required to make initial notifications for construction, startup, and performance testing. They must also report the results of a performance test, and demonstration of a continuous monitoring system if applicable. After the initial recordkeeping and reporting requirements, semiannual excess emission reports are required. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or malfunction in the operation of the air pollution control device, or any periods during which the monitoring system is inoperative. These notifications, reports and records are required in general, of all sources subject to NSPS.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

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: At the writing of the previous ICR there were 38 sources currently subject to the standards. It is estimated that 3 additional sources per year will become subject to the standard. The current ICR estimates average annual burden to the industry to be 2174 person hours. The respondent costs have been calculated on the basis of $14.50 per hour plus 110 percent overhead rate. The current ICR also estimates the average annual burden to the industry is $66,198.

The following is a breakdown of burden used in the ICR. Burden is calculated as two hours for respondents to write the reports for; notification of construction or reconstruction, notification of physical or operational changes, notification of anticipated startup, notification of actual startup, notification of initial performance test. Initial performance tests are allocated 180 burden hours. It is assumed that 20% of all affected facilities will have to repeat performance tests.

The recordkeeping burden is estimated to be 15 minutes to enter records of operating parameters. It is assumed that the plant will operate 250 days a year, therefore, this information will be recorded 250 times a year. Sources which have excess emissions are required to submit excess emission reports. These reports are allocated 8 burden hours with an average of 2 reports per year. There is no additional third party burden relevant to this ICR.

This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of

information; and transmit or otherwise disclose the information.

NSPS Subpart RR; Pressure Sensitive Tape and Label

Affected entities: Facilities affected by this action are those that are subject to the Clean Air Act New Source Performance Standard subpart RR, which applies to facility owners and operators who manufacture pressure sensitive tape and labels and whose facilities were built, modified or reconstructed after December 30, 1980.

Title: ''NSPS for Pressure Sensitive Tape and Label Surface Coating (subpart RR)—information requirements,'' OMB control number: 2060–0004, Expiration date 10/31/96.

Abstract: This ICR contains record keeping and reporting requirements that are mandatory for compliance with subpart RR, New Source Performance Standards for facilities that manufacture pressure sensitive tape and labels. In the Administrator's judgement volatile organic compounds (VOC's) from this industry contribute to air pollution that may reasonably be anticipated to endanger public health and welfare. Therefore, this NSPS was promulgated under Clean Air Act (CAA) section 111 for this source category. EPA is granted the authority to require facilities to provide information concerning their air emissions under CAA sections 111(a) and 114(a).

Owners and operators of the affected facilities must make the following onetime-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of initial start-up; notification of any physical change to an existing facility that may increase the regulated pollutant emission rate; notification of initial performance test and the results of the initial performance test. Owners or operators are also required to maintain records of the occurrences and duration of any start-up, shut-down or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports and records are required, in general, of all sources subject to NSPS.

Monitoring requirements specific to these coating operations consist of maintaining a calendar month record of all coatings used and their VOC content, the amount of solvent applied and recovered when a solvent recovery device is used, temperature of exhaust gases if thermal incineration is used, temperature of exhaust gases both upstream and downstream of the catalyst bed if catalytic incineration is used and an indication that a hood or enclosure device to capture fugitive emissions is operational. Any affected facility that inputs to the coating process 45 Mg of VOC or less per 12 month period is not subject to the emission limits of 40 CFR § 60.442, however, the effected facility shall maintain a 12 month record of the amount of solvent applied in the coating at the facility.

When thermal or catalytic incineration is performed, the owner or operator shall keep records of each three-hour period during which the incinerator temperature averaged more than 38 degrees celsius below the temperature of the most recent performance test. Records of this information shall be kept at the source for a period of two years.

The record keeping requirements for the surface coating industry of pressure sensitive tape and labels consist of the occurrence and duration of any start-up and malfunctions as described. They include the initial performance test results including information necessary to determine conditions of the performance test, and performance test measurements and results including, for affected facilities complying with the standard without the use of add-on controls, a weighted average of the mass of solvent used per mass of coating solids applied; the weighted average mass of VOC per mass of coating solids applied at facilities controlled by a solvent recovery device; and the weighted average mass of VOC per mass of coating solids applied being used at a facility controlled by a solvent destruction device; and the results of the monthly performance and records of operating parameters. Records of start-ups, shutdowns, and malfunctions should be noted as they occur. Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements and records.

The reporting requirements for this industry currently include the initial notifications listed, the initial performance test results, quarterly reports of excess VOC emissions, and semiannual reports when no excess emissions are recorded. Semiannual monitoring system results shall include temperature variances of the control device, the date and time of the deviance, the nature and cause of the malfunction (if known) and corrective measures taken, and identification of the time period during which the continuous monitoring system was inoperative.

Notifications inform the Agency or delegated authority about when a source becomes subject to the standard. The reviewing authority can then inspect the source to check if the pollution control devices are properly installed and operated. Performance test reports are needed as these are the Agency's record of a source's initial capability to comply with the emissions standard. The semiannual reports are used for problem identification, and a check on source operation and maintenance, and for compliance determinations.

This collected information is used by the Agency to efficiently monitor industry compliance with NSPS. In the absence of collecting such information, continuous monitoring of compliance with the standards could be ensured only through continuous on-site inspections by regulatory agency personnel, which would be extremely costly.

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.

Data submitted to EPA that is deemed Confidential Business Information will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, Part 2, Subpart B—Confidentiality of Business Information (see 40 CFR 2).

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

Burden Statement: The reporting requirements for this information collection consist of performance testing, notifications and VOC emission reporting. EPA estimates that each initial performance test will take 60 hours to complete and that 45 new or modified facilities will be required to conduct the tests each year and that about 20 percent will fail and have to re-test. In addition, there are monthly

performance tests which take approximately 1 hour to conduct, for a total of 12 hours per year per facility. These are conducted to ensure that the pollution control systems are working. In terms of the notification requirements, EPA estimates that on average it takes two hours to prepare the four different notifications for a new plant, notification of construction, anticipated start-up, actual start-up, initial performance test, and submission of the initial performance test.

Each facility is required to report on a semiannual basis the amount of emissions that the facility emitted in excess of the emission standard. Assuming that a facility would submit one report a year for excess emissions in addition to the required semiannual emission report a facility would spend about 5 hours preparing each report for a total of 10 hours per year. For those facilities using incineration (assume 80 percent of all facilities) to control emissions, exhaust gas temperature reports would be submitted semiannually and would take approximately 4 hours to prepare for a total of 8 hours per facility. The emissions recordkeeping takes approximately 15 minutes per day and assuming that the facility is operational for 250 days a year the time expended on this activity would be 62 hours and 30 minutes. An existing facility that is in compliance will spend about 92 hours and 30 minutes complying with the standard. A facility that is new or that has been modified will spend an additional 68 hours complying with the performance test and notifications for new facilities. EPA assumes the average wage is $14.95 per hour plus 110 percent overhead, which equals $30.45. Thus, plants that are in compliance and that are not new or newly modified will spend about $2,817 for compliance with the information collection requirements. Newly built or modified plants will spend about $4,668 to comply with the information collection requirements. EPA estimates that there were 504 affected facilities at the time of the previous ICR renewal plus the average number of facilities to come on-line over the following three years, 45 facilities, totalling 549 sources that are subject to the standard. The total industry annual burden according to EPA's estimate is 54,921 hours or $1,672,346.

This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

NSPS Subpart SS; Large Appliance Surface Coating

Affected entities: Entities potentially affected by this action are each large appliance surface coating line in which organic coatings are applied and for which construction, modification or reconstruction commenced after December 24, 1980. A surface coating line includes the coating application station(s), flash-off area, and curing oven.

Title: NSPS for Industrial Surface Coating: Large Appliances - Information Requirements; OMB NO.: 2060–0108; Expiration date: October 31, 1996.

Abstract: The EPA is charged under Section 111 of the Clean Air Act, as amended, to establish standards of performance for new stationary sources that reflect:

> * * * application of the best technological system of continuous emissions reduction which (taking into consideration the cost of achieving such emissions reduction, of any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated [Section 111(a)(1)].

The Agency refers to this charge as selecting the best demonstrated technology (BDT). Section 111 also requires that the Administrator review, and, if appropriate revise such standards every four years. In addition, Section 114(a) states that:

> * * * the Administrator may require any owner or operator subject to any requirement of this Act to (A) establish and maintain such records, (B) make such reports, install, use and maintain such monitoring equipment or methods (in accordance with such methods at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (D) provide such other information, as he may reasonably require.

In the Administrator's judgment, VOC emissions from the large appliance surface coating industry cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, an NSPS was promulgated for this source category.

The control of VOC emissions from large appliance coating operations requires not only the installation of properly designed equipment, but also the operation and maintenance of that equipment. VOC emissions from the coating of large appliances result from the application and curing or drying of organic coatings on the surface of each large appliance part or product. These standards rely on the reduction of VOC emissions through either a capture system and incinerator or a capture system and solvent recovery system.

Information is recorded in sufficient detail to enable owners or operators to demonstrate compliance with the standards. This information is used to monitor effective operation of the capture system and control devices, thus ensuring continuous compliance with the standards. The semiannual reporting requirement for no exceedances of the monitoring parameters provides a good indication of a source's compliance status.

The information collected from record keeping and reporting requirements is also used for targeting inspections, and is of sufficient quality to be used as evidence in court. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

In order to ensure compliance with these standards, adequate record keeping is necessary. In the absence of such information, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

Owners/operators of affected facilities must report excess emissions and deviations in operating parameters on a quarterly basis. Where no exceedances have occurred during a particular quarter, a report stating this shall be submitted semi-annually.

Notification of construction and startup indicates to enforcement personnel when a new affected facility has been constructed and therefore is subject to the standards. The information generated by the monitoring, record keeping and reporting requirements described above is used by the Agency to ensure facilities affected by the NSPS continue to operate the control equipment used to achieve compliance with the NSPS.

The Agency has calculated individual burdens for each of the record keeping and reporting requirements applicable to the industry. The individual burdens are expressed under standardized headings believed to be consistent with the concept of burden under the Paperwork Reduction Act. Where appropriate, specific tasks and major assumptions have been identified.

The record keeeping and reporting requirements burden are as follows: Read Instructions—26 hours; Notification of construction or reconstruction—52 hours; Notification of anticipated date of initial startup—52 hours; Notification of actual date of initial startup—52 hours; Initial Performance Test—1,560 hours; Repeat Performance Test—312 hours; Monthly performance test—3528 hours; Report performance test—3,675 hours; Install, calibrate, maintain, and operate temperature monitoring device—1,880 hours; Identify and record incinerator combustion temperature; Identify and record excess emissions—3675 hours; Records of operating parameters—18,375.

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 individual burdens for each of the record keeping and reporting requirements applicable to the industry are consistent with the concept of burden under the Paperwork Reduction Act. The only type of industry costs associated with the information collection activity in the standards are labor costs. The labor estimates in the table were derived from standard estimates based on EPA's experience with other standards. The average annual burden to industry over the next three years from these record keeping and reporting requirements is estimated at 29,512 person-hours for 268 existing facilities. It is estimated that each year 26 new sources will replace existing sources. No growth in facilities is expected during the next three years. The respondent costs have been calculated on the basis of $14.50 per hour plus 110 percent overhead. The average annual burden to industry over the next three years of the ICR is estimated to be $898,641. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

NSPS Subpart TT; Metal Coil Surface Coating

Affected entities: Entities potentially affected by this action are each metal coil surface coating operation in which organic coatings are applied and for which construction, modification or reconstruction commenced after January 5, 1981. A metal coil surface coating operation means the application system used to apply an organic coating to the surface of any continuous metal strip with thickness of 0.15 millimeter (mm) (0.0006 in.) Or more that is packaged in a roll or coil.

Title: NSPS for Metal Coil Surface Coating, Subpart TT—Information Requirements; OMB NO.: 2060–0107; Expiration date: October 31, 1996.

Abstract: The EPA is charged under Section 111 of the Clean Air Act, as amended, to establish standards of performance for new stationary sources that reflect:

* * * application of the best technological system of continuous emissions reduction which (taking into consideration the cost of achieving such emissions reduction, of any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated [Section 111(a)(1)].

The Agency refers to this charge as selecting the best demonstrated technology (BDT). Section 111 also requires that the Administrator review, and, if appropriate revise such standards every four years. In addition, Section 114(a) states that:

* * * the Administrator may require any owner or operator subject to any requirement of this Act to (A) establish and maintain such records, (B) make such reports, install, use and maintain such monitoring equipment or methods (in accordance with such methods at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (D) provide such other information, as he may reasonably require.

In the Administrator's judgment, VOC emissions from the metal coil surface coating industry cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, an NSPS was promulgated for this source category.

The control of VOC emissions from large appliance coating operations requires not only the installation of properly designed equipment, but also the operation and maintenance of that equipment. VOC emissions from the coating of metal coils result from the application and curing or drying of organic coatings on the coil or roll surface. These standards rely on the reduction of VOC emissions through either a capture system and incinerator or a capture system and solvent recovery system.

Information is recorded in sufficient detail to enable owners or operators to demonstrate compliance with the standards. This information is used to monitor effective operation of the capture system and control devices, thus ensuring continuous compliance with the standards. The semiannual reporting requirement for no exceedances of the monitoring parameters provides a good indication of a source's compliance status.

The information collected from record keeping and reporting requirements is also used for targeting inspections, and is of sufficient quality to be used as evidence in court. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

In order to ensure compliance with these standards, adequate record keeping is necessary. In the absence of such information, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

Owners/operators of affected facilities must report excess emissions and deviations in operating parameters on a quarterly basis. Where no exceedances have occurred during a particular quarter, a report stating this shall be submitted semi-annually.

Notification of construction and startup indicates to enforcement personnel when a new affected facility has been constructed and therefore is subject to the standards. The information generated by the monitoring, record keeping and reporting requirements described above is used by the Agency to ensure facilities affected by the NSPS continue to operate the control equipment used to achieve compliance with the NSPS.

The Agency has calculated individual burdens for each of the record keeping and reporting requirements applicable to the industry. The individual burdens are expressed under standardized

headings believed to be consistent with the concept of burden under the Paperwork Reduction Act. Where appropriate, specific tasks and major assumptions have been identified.

The record keeeping and reporting requirements burden are as follows: Read instructions—6 hours; Report of initial performance test—360 hours; Repeat of performance test—72 hours; Notification of construction or reconstruction—12 hours; Notification of anticipated data of initial startup—12 hours; Notification of actual date of initial startup—12 hours; Emission Reports—1,450 hours; Temperature reports—744 hours; Monthly performance test—1,392 hours; Record operating parameters—7,250.

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 individual burdens for each of the record keeping and reporting requirements applicable to the industry are consistent with the concept of burden under the Paperwork Reduction Act. The only type of industry costs associated with the information collection activity in the standards are labor costs. The labor estimates in the table were derived from standard estimates based on EPA's experience with other standards. The average annual burden to industry over the next three years from these record keeping and reporting requirements is estimated at 11,310 person-hours for 116 existing facilities. It is estimated that each year 3 new sources will be required to meet these reporting requirements. The respondent costs have been calculated on the basis of $14.50 per hour plus 110 percent overhead. The average annual burden to industry over the next three years of the ICR is estimated to be $344,390. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

NSPS Subpart WW; Beverage Can Surface Coating

Affected entities: Entities potentially affected by this action are each facility with beverage can surface coating lines: each exterior base coat operation, each overvarnish coating operation, and each inside spray coating operation and for which construction, modification or reconstruction commenced after November 26, 1980. A surface coating line includes the coating application station(s), flash-off area, and curing oven.

Title: NSPS for the Beverage Can Surface Coating Industry—Information Requirements; OMB No.: 2060–0001; Expiration date: October 31, 1996.

Abstract: The EPA is charged under Section 111 of the Clean Air Act, as amended, to establish standards of performance for new stationary sources that reflect:

* * * application of the best technological system of continuous emissions reduction which (taking into consideration the cost of achieving such emissions reduction, of any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated [Section 111(a)(1)].

The Agency refers to this charge as selecting the best demonstrated technology (BDT). Section 111 also requires that the Administrator review, and, if appropriate, revise such standards every four years. In addition, Section 114(a) states that:

* * * the Administrator may require any owner or operator subject to any requirement of this Act to (A) establish and maintain such records, (B) make such reports, install, use and maintain such monitoring equipment or methods (in accordance with such methods at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (D) provide such other information, as he may reasonably require.

In the Administrator's judgment, VOC emissions from the beverage can surface coating industry cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, an NSPS was promulgated for this source category.

The control of VOC emissions from beverage can surface coating lines requires not only the installation of properly designed equipment, but also the operation and maintenance of that equipment. VOC emissions from the coating of beverage can surfaces result from the application and curing or drying of organic coatings on the surface of each beverage can part or product. These standards rely on the reduction of VOC emissions through either a capture system and incinerator or a capture system and solvent recovery system.

Information is recorded in sufficient detail to enable owners or operators to demonstrate compliance with the standards. This information is used to monitor effective operation of the capture system and control devices, thus ensuring continuous compliance with the standards. The semiannual reporting requirement for no exceedances of the monitoring parameters provides a good indication of a source's compliance status.

The information collected from record keeping and reporting requirements is also used for targeting inspections, and is of sufficient quality to be used as evidence in court. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

In order to ensure compliance with these standards, adequate record keeping is necessary. In the absence of such information, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

Owners/operators of affected facilities must report excess emissions and deviations in operating parameters on a quarterly basis. Where no exceedances have occurred during a particular quarter, a report stating this shall be submitted semiannually.

Notification of construction and startup indicates to enforcement personnel when a new affected facility has been constructed and therefore is subject to the standards. The information generated by the monitoring, record keeping and reporting requirements described above is used by the Agency to ensure facilities affected by the NSPS continue to operate the control equipment used to achieve compliance with the NSPS.

The Agency has calculated individual burdens for each of the record keeping and reporting requirements applicable to the industry. The individual burdens are expressed under standardized

headings believed to be consistent with the concept of burden under the Paperwork Reduction Act. Where appropriate, specific tasks and major assumptions have been identified. The record keeping and reporting requirements burden are as follows: Read instructions—2 hours; Report of initial performance test—120; Repeat of performance test—120 hours; Notification of construction or reconstruction—4 hours; Notification of anticipated date of initial startup—4 hours; Notification of actual date of initial startup—4 hours; Notification of initial performance test—4 hours; VOC emission reports—263 hours; Temperature reports—136 hours; Monthly performance test—252 hours; Records of operating parameters—1,916 hours.

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 individual burdens for each of the record keeping and reporting requirements applicable to the industry are consistent with the concept of burden under the Paperwork Reduction Act. The only type of industry costs associated with the information collection activity in the standards are labor costs. The labor estimates in the table were derived from standard estimates based on EPA's experience with other standards. The average annual burden to industry over the next three years from these record keeping and reporting requirements is estimated at 2,729 person-hours for 21 existing facilities. It is estimated that each year 2 new sources will replace existing sources with no net increase in facilities required to report. The respondent costs have been calculated on the basis of $14.50 per hour plus 110 percent overhead. The average annual burden to industry over the next three years of the ICR is estimated to be $83,098. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

NSPS Subpart GGG; Equipment Leaks of VOC in Petroleum Refineries

Affected entities: Entities potentially affected by this action are process units at petroleum refineries that commenced construction, modification, or reconstruction after January 4, 1983. Affected process units include each group of equipment assembled to produce intermediate or final products from petroleum, unfinished petroleum derivatives, or other intermediates.

Title: Standards of Performance for Equipment Leaks of VOC in Petroleum—Refineries NSPS Subpart GGG, OMB Number 2060–0067, expires August 31, 1996.

Abstract: Owners or operators of the affected facilities described must make the following one-time-only reports: notifications of the anticipated and actual date of startup, notification of the date of construction or reconstruction, notification of any physical or operational change to an existing facility which may increase the emission rate of any regulated air pollutant, notification of the date of the initial performance test, and results of the performance tests.

Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. These notifications, reports and records are required in general, of all sources subject to NSPS.

Semiannual reports are required to measure compliance with the standards of NSPS Subpart VV. Monthly monitoring of equipment in VOC service shall take place as specified in Subpart VV Section 60.485(b). If no leaks are detected for two successive months, monitoring may be performed once per quarter. If a leak is detected, the equipment shall be monitored monthly until a leak is not detected for two successive months. Also, leak location shall be recorded in a log, and this information shall be kept available for at least two years. Leaks shall be repaired within 15 days and the date of successful repair shall be recorded in the log.

Semiannual reports shall be submitted itemizing information for each month. All reports are to be sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional office. Notifications are used to inform the agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the standard is being met. Performance test results are needed as these are the Agency's record of a sources initial capacity to meet the standard. The semi annual reports are used for problem identification, as a check on source operations and maintenance, and for compliance determinations.

In the Administrator's judgement, VOC emissions from process units cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, New Source Performance Standards have been promulgated for this source category as required under Section 111 of the Clean Air Act.

The control of emissions of VOC from process units requires not only the installation of properly designed equipment, but also the proper operation and maintenance of that equipment so that emissions can be minimized. VOC emissions from process units are the result of equipment leaks. These standards rely on the maintenance of the equipment and adequate monitoring.

To ensure compliance with these standards, adequate recordkeeping and reporting is necessary. In the absence of such information collection requirements, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act and in accordance with any applicable permit.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

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 Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry for the currently approved 1993 Information Collection Request (ICR). Where appropriate, the Agency identified specific tasks and made assumptions, while being consistent with the concept of burden under the Paper Reduction Act.

The estimate was based on the assumption that there would be three new affected facilities each year and that there was an average of 25 sources in existence at the start of the three years covered by the ICR. For the new sources, it was estimated that it would take: three person-hours to read the instructions (one hour per respondent), 24 person-hours to gather the information to write the initial reports (8 hours per respondent) and 86 person-hours (18 hours per respondent) to conduct the initial performance tests (assuming that 60% of the tests must be repeated). For all sources, it was estimated that it would take: 480 person-hours (16 hours per respondent) to fill out the excess emission reports, and 3,285 person-hours (109.5 hours per respondent) to enter information for records of operating parameters (assuming a source operates 365 days per year and that it takes 0.3 hours per occurrence).

The annual average annual burden to industry over the past three year period from recordkeeping and reporting requirements had been estimated at 3,878 person-hours. The respondents costs was calculated on the basis of $14.50 per hour plus 110 percent overhead. The average annual burden to industry over the past three years was estimated to be $118,085.

This estimate includes the time needed to review instructions; develop, acquire, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

NSPS Subpart HHH: Synthetic Fiber Production

Affected entities: Entities potentially affected by this action are those which are subject to New Source Performance Standards (NSPS) Subpart HHH, Standards of Performance for Synthetic Fiber Production. These standards apply to solvent spun synthetic fiber process that produces more than 500 megagrams of fiber per year and commenced construction or reconstruction after November 23, 1982. These standards do not apply to any facility that uses the reaction spinning process to produce spandex fiber or the viscose process to produce rayon fiber. This standard does not apply to modified sources.

Title: NSPS Subpart HHH, Standards of Performance for Synthetic Fiber Production. OMB Control Number: 2060–0059, EPA #1156.

Expiration date: October 31, 1996.

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with Subpart HHH, New Source Performance Standards for Synthetic Fiber Production. In the Administrator's judgment, VOCs from synthetic fiber production plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, New Source Performance Standards have been promulgated for this source category as required under Section 111 of the Clean Air Act.

The control of emissions of VOCs requires not only the installation of properly designed equipment, but also the proper operation and maintenance of that equipment. These standards rely on the capture of pollutants vented to a control device.

Owners or operators of synthetic fiber production plants subject to NSPS Subpart HHH are required to make initial notifications for construction, startup, and performance testing. They must also report the results of a performance test, and demonstration of a continuous monitoring system if applicable. After the initial recordkeeping and reporting requirements, excess emission reports are required quarterly. Semiannual reports are filed if no excess emissions.

Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or malfunction in the operation of the air pollution control device, or any periods during which the monitoring system is inoperative. These notifications, reports and records are required in general, of all sources subject to NSPS. NSPS subpart HHH also requires semiannual reports of VOCs used, and reports of excess fiber production.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

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: At the writing of the previous ICR there were 25 sources currently subject to the standards. It is estimated that 1 additional source per year will become subject to the standard. The current ICR estimates average annual burden to the industry to be 2325 person hours. The respondent costs have been calculated on the basis of $14.50 per hour plus 110 percent overhead rate. The current ICR also estimates the average annual burden to the industry is $70,796.

The following is a breakdown of burden used in the ICR. Burden is calculated as two hours for respondents to write the reports for: notification of construction or reconstruction, notification of physical or operational changes, notification of anticipated startup, notification of actual startup, notification of initial performance test, notification of demonstration of COM. Initial performance tests are allocated 72 burden hours. It is assumed that 20% of all affected facilities will have to repeat performance tests. These are all one time only burdens.

The recordkeeping burden is estimated to be 15 minutes to enter records of operating parameters. It is assumed that the plant will operate 250

days a year, therefore, this information will be recorded 250 times a year. Sources which have excess emission are required to submit excess emission reports. These reports are estimated to take 8 hours. It is assumed that each facility will submit one quarterly report every other year in addition to the semiannual reports. There is no additional third party burden relevant to this ICR.

These estimates include the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

NSPS Subpart III and NNN; Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes, and Distillation Operations

Affected entities: Entities potentially affected by this action are those which are subject to the Standards of Performance of Volatile Organic Compound (VOC) emissions from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes, Subpart III and Distillation Operations, Subpart NNN with the exceptions listed in 40 CFR 60.660(c).

Title: NSPS for SOCMI Air Oxidation Unit Processes and Distillation Operations, Subpart III and NNN, OMB number 2060–0197, expires August 31, 1996.

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR Part 60.610, Subpart III, Standards of Performance for VOC Emissions from SOCMI Air Oxidation Unit Processes and 40 CFR Part 60.660, Subpart NNN, Standards of Performance for VOC from SOCMI Distillation Operations. This information is used by the Agency to identify sources subject to the standards and to insure that the best demonstrated technology is being properly applied. The standards require periodic recordkeeping to document process information relating to the sources' ability to meet the requirements of the standard and to note the operation conditions under which compliance was achieved.

In the Administrator's judgment, VOC emissions from SOCMI air oxidation unit processes and distillation operations cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, NSPS were promulgated for this source category.

Owners or operators of the affected facilities described must make the following one-time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the date of the initial performance test; and the results of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports and records are required, in general, of all sources subject to NSPS.

In addition, owners/operators of affected facilities are required to record periods of operation during which the performance boundaries are exceeded, results of flare pilot flame monitoring, all periods of operation of a boiler or process heater, and to continuously record the indication of vent stream flow to the control device. Records of startups, shutdowns, and malfunctions should be noted as they occur. Any owner or operator subject to the provisions of this part shall maintain a file of all of these records, and retain the file for at least two years following the date of such measurements and records.

The reporting requirements for this industry currently include the initial notifications listed, the initial performance test results, and semiannual reports. Semiannual reports shall include the following: all exceedances of parameter boundaries; all periods during which the vent stream is diverted from the control device or has no flowrate; all periods when the boiler or process heater was not operated; all periods in which the pilot flame of the flare was absent; and any recalculation of the TRE index value.

All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office. Notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated and the standard is being met. Performance test reports are needed as these are the Agency's records of a source's initial capability to comply with the emission standard, and note the operating conditions under which compliance was achieved. The semiannual reports are used for problem identification, as a check on source operation and maintenance, and for compliance determinations.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number listed in 40 CFR Part 9.

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 Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry for the currently approved ICR. Where appropriate, the Agency identified specific tasks and made assumptions, while being consistent with the concept of burden under the Paperwork Reduction Act.

The burden estimates for NSPS Subpart III:

The estimate was based on the assumption that there would be 10 new affected facilities each year and that there would be an annual average of 75 affected facilities over each of the next three years covered by the ICR. For new sources, it was estimated that it would take: 10 person hours to read the instructions, 600 person hours to conduct the initial performance tests (assuming that 20% of the tests must be repeated), and 70 person hours to gather the information and write the initial reports. For all sources, it was estimated that it would take: 450 person hours to fill out semiannual reports and 6,305

person hours to enter information for records of operating parameters.

The annual average burden to industry for the three-year period covered by this ICR from recordkeeping and reporting requirements has been estimated at 7,435 person hours. The respondents cost were calculated on the basis of $21.00 per hour plus 110% overhead. The total annual burden to industry is estimated at $327,884.

The burden estimates for NSPS Subpart NNN:

The estimate was based on the assumption that there would be 236 new affected facilities each year and that there would be an annual average of 1770 affected facilities over each of the next three years covered by the ICR. For new sources, it was estimated that it would take: 236 person hours to read the instructions, 16,992 person hours to conduct the initial performance tests (assuming that 20% of the tests must be repeated), and 1,625 person hours to gather the information and write the initial reports. For all sources, it was estimated that it would take: 10,620 person hours to fill out semiannual reports and 148,798 person hours to enter information for records of operating parameters.

The annual average burden to industry for the three-year period covered by this ICR from recordkeeping and reporting requirements has been estimated at 178,271 person hours. The respondents cost were calculated on the basis of $21.00 per hour plus 110% overhead. The total annual burden to industry is estimated at $7,861,751.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. No additional third party burden is associated with this ICR.

NSPS subparts KKK/LLL: Onshore Natural Gas Processing

Affected entities: Entities potentially affected by this action are those onshore natural gas processing plants for which construction is commenced after January 20, 1984. More specifically for Volatile Organic Compounds (VOC) emissions affected facilities include compressors in VOC service or inlet gas service, and process units. For sulfur dioxide (SO2), the affected facilities include each sweetening unit.

Title: New Source Performance Standards (NSPS) for Onshore Natural Gas Processing Plants/ Equipment Leaks of VOC (Subpart KKK) and Emissions of SO2 (Subpart LLL)—Reporting and Recordkeeping (EPA ICR No. 1086.03; OMB No, 2060–0120). This is a request for extension of a currently approved information collection.

Abstract: Owners or operators of onshore natural gas processing units must provide EPA, or the delegated State regulatory authority with the following one-time-only reports (specified in 40 CFR 60.7): Notifications of the anticipated and actual date of start up, notification of the date of construction or reconstruction, notification of any physical or operational changes to an existing facility which may increase the emission rate of any regulated air pollutant. For large facilities subject to Subpart LLL facilities must provide notification of the date upon which demonstration of the continuous monitoring system performance commences, notification of the date of the initial performance test, and results of the performance test.

Owners and operators are also required to maintain records of the occurrence and duration of any start up, shutdown, or malfunction in the operation of an effected facility, or malfunction in the operation of the air pollution control device, or any periods during which the monitoring system is inoperative. These notifications, reports, and records are required in general of all sources subject to NSPS.

Facilities subject to Subpart KKK shall provide information on leaks from pressure relief devices, the date the leak was detected, repair method used and other pertinent details. Facilities subject to Subpart LLL must provide information on excess emissions of SO2.

In addition to reporting and recordkeeping requirements, large facilities subject to Subpart LLL must install, calibrate, maintain, and operate a continuous monitoring system (CMS) to monitor SO_2 and must notify EPA or the State regulatory authority of the date upon which demonstration of the CMS performance commences. Owners or operators must submit semiannual reports indicating whether compliance was achieved, and their assessment of monitoring system performance (specified in 40 CFR 60.7). The notifications and reports enable EPA or the delegated State regulatory authority to determine that best demonstration technology is installed and properly operated and maintained and to schedule inspections.

To ensure compliance with these standards, the required records and reports are necessary to enable the Administrator: (1) To identify new, modified, or reconstructed sources subject to the standard; (2) to ensure that the emission limits are being achieved; and (3) to ensure that emission reduction systems are being operated and maintained properly. In the absence of such information collection requirements, enforcement personnel would be unable to determine whether standards are being met on a continuous basis, as required by the Clean Air Act and in accordance with any applicable permit.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

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 Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry for the currently approved 1993 Information Collection Request (ICR). Where applicable, the Agency identified specific tasks and made assumptions, while being consistent with the concept of burden under the Paper Reduction Act.

The estimate was based on the assumption that there would be 32 new effected facilities subject to Subpart KKK and Subpart LLL per year. Approximately 236 sources are currently subject to these standards. The

annual burden of reporting and recordkeeping requirements for facilities subject to Subpart KKK and Subpart LLL are summarized by the following information. The reporting requirements for Subpart KKK are as follows: Read instructions (1 person-hour), Notification of construction (2 person-hours), Notification of reconstruction (2 person-hours), Notification of physical or operational changes (8 person-hours), Notification of anticipated start-up (2 person-hours), Semi-annual reports (70 person-hours) (For each plant one report is required for all compressors and one each for the three process units that each plant is assumed to have), Recalibrate monitors (4 person-hours), Method 21 performance evaluation (2 person-hours). The reporting requirements for Subpart LLL are as follows: Read Instructions (1 person-hour), Initial performance test (734 person-hours), Demonstration of CMS (350 person-hours), Repeat of performance test (734 person-hours), Write report (notification) (10 person-hours), Write report (excess emissions) (16 person-hours). The recordkeeping requirements for Subpart KKK are as follows: Filing and maintaining records (240 person-hours). The recordkeeping requirements for Subpart LLL are as follows: Determining SO_2 reduction efficiency (2 person-hours) (These facilities are not expected to undergo frequent startup or shutdown), Develop record system (20 person-hours), Gathering information for records of startup, shut-down, malfunction, etc. (0.5 person-hours) (Plants with design operating capacities less than 2 LT/D are required to determine, record and maintain a file of their designed operating capacity), Gathering information for records of all measurements and information required by standard (1.5 person-hours), Gathering information for records of capacity data (2 person-hours). Records must be kept for a period of two years from data collection.

This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

NESHAP Subpart E; Mercury

Affected entities: Entities potentially affected by this action are those stationary sources which process mercury ore to recover mercury, use mercury chlor-alkali cells to produce chlorine gas and alkali metal hydroxide, and incinerate or dry wastewater treatment plant sludge.

Title: National Emission Standard for Mercury (Part 61, Subpart E), Reporting and Recordkeeping

OMB Control No: 2060–0097.

Expiration Date: 08/31/96.

Abstract: The inhalation of metallic mercury vapors is believed to cause central nervous system injury and kidney damage in humans. Consequently, a national emission standard was developed for mercury ore processing facilities, mercury chlor-alkali plants, and sludge incineration and drying plants. This standard was designed to ensure that emissions from these facilities do not cause ambient concentrations of mercury to exceed the inhalation effects limit of 1 microgram per cubic meter. In order to ensure compliance with the standards, adequate recordkeeping and reporting is necessary. This information enables the Agency to: (1) Identify the sources subject to the standard; (2) ensure initial compliance with emission limits; and (3) verify continuous compliance with the standard. Specifically, the rule requires an application for approval of construction, notification of startup, and a notification and report of the initial emissions test. In addition, estimates of new emission levels must be reported whenever a change of operation is made that would potentially increase emissions. Sludge incineration and drying plants must also perform, maintain records of, and report annual emissions tests. Mercury-cell chlor-alkali plants must conduct a performance test on the hydrogen and end-box ventilation streams and simultaneously monitor certain control device and/or process parameters.

In the absence of such information collection requirements, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. Consequently, these information collection requirements are mandatory, and the records required by this NESHAP must be retained by the owner or operator for two years. In general, the required information consists of emissions data and other information deemed not to be private. However, any information submitted to the agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, Part 2, Subpart B—Confidentiality of Business Information. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

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 average annual burden to industry over the next three years from these recordkeeping and reporting requirements is estimated at 37,068 person-hours. This is based on an estimated 298 respondents. The average annual burden for reporting only is projected to be 3,864 hours, with an average of 1.25 reports submitted per affected facility, and a burden of 10.5 hours per response. Sludge incineration and drying plants are required to submit a report of their annual emission tests, while mercury-cell chlor-alkali plants must submit semi-annual reports and notifications of any exceedences of monitored parameters. All facilities must keep hourly records of operating parameters, and mercury-cell chlor-alkali plants must also record any mercury leaks or spills on a daily basis.

This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

NESHAP Subpart M; Asbestos

Affected entities: The standard regulates the demolition and renovation of facilities; the disposal of asbestos waste; asbestos milling, manufacturing, and fabricating; the use of asbestos on roadways; asbestos waste conversion facilities; and the use of asbestos insulation and sprayed-on materials.

Title: NESHAP Subpart M—National Emission Standard for Asbestos, OMB No. 2060–0101, expires August 31, 1996.

Abstract: Owners or operators of the affected milling, manufacturing fabricating, waste disposal, and waste conversion facilities described must make the following one-time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative.

Therefore, the recordkeeping requirements for the facilities mentioned above consist of the occurrence and duration of any startup and malfunction as described. They include the initial performance test results including information necessary to determine the conditions of the performance test, the performance test measurements and results, including monitoring each potential source of asbestos emissions for visible emissions to the outside air and inspecting air cleaning devices to ensure proper operation. Records of startups, shutdowns, and malfunctions should be noted as they occur. Any owner or operator subject to the provisions of this subpart shall maintain a file of these measurements for at least two years following the date of such measurements, maintenance reports, and records. The reporting requirements for this industry currently include the initial notifications listed, the initial performance test results, and quarterly reports of instances when visible emissions are observed at any time during the quarter.

Owners or operators of demolitions and renovations must notify EPA in advance of the initiation of any asbestos removal work. The notice provides information on the dates of operation, the nature of the removal operation, the quantity of asbestos, and controls to be used. The reviewing authority may then inspect the source to ensure compliance with the standard. Demolitions and renovations tend to be short projects, and it is difficult at best to determine compliance with the standard once the project has been completed. Therefore, it is important that the delegated authority be renotified as necessary when information in the original notification changes. Additionally, without renotification, the Agency or delegated authority may needlessly inspect a demolition or renovation site where the project has been delayed. The demolition and renovation standard requires that a representative (such as a foreman or management-level person) trained in the provisions of the standard be present at the facility. Evidence that the required training has been completed is required in order to ensure compliance with the provision of the standard. The regulation requires asbestos removal contractors that claim exemption from the wetting provisions because of freezing temperatures to take temperature readings throughout the day and record the information. The provisions require that all containers of asbestos waste be labeled including the name of the waste generator and the location of where the waste was generated. Owners or operators of demolitions and renovations are required to prepare and maintain, for at least two years, records of waste shipment as to its destination, the quantity of waste, the date of shipment, and to furnish a copy of the record to disposal site owners or operators. The regulation also requires that generators of asbestos waste attempt to reconcile instances in which a signed copy of the waste shipment record is not received from the disposal site and that the generator notify EPA if delivery to the disposal site cannot be confirmed.

Owners or operators of waste disposal sites are required to document all asbestos waste shipments that are received and send a copy of each record back to the generator. A record of the location and quantity of asbestos in the landfill is required as well as noting the presence and location of asbestos in the landfill property deed. Disposal site owners or operators have to report to EPA any discrepancies between the amount of waste designated on the waste shipment record and the amount actually received, as well as instances of improperly contained waste. Disposal sites are required to maintain records for at least two years. An owner or operator of an operation in which asbestos-containing materials are spray-applied must notify EPA in advance of the spraying operation. The notice provides information on the name and address of the owner or operator, location of the spraying operation, and procedure to be followed.

In the Administrator's judgement, asbestos emissions from the demolition or renovation of asbestos-containing structures; the disposal of asbestos waste; asbestos milling, manufacturing, and fabricating; the use of asbestos on roadways; the use of asbestos insulation and spray materials; and the conversion of asbestos-containing waste material into nonasbestos material cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, a NESHAP was promulgated under Section 112 of the Clean Air Act for this source category. The control of emissions of asbestos from the regulated sources requires not only the installation of properly designed equipment, but also the operation and maintenance of that equipment and following specified work practices. These standards rely on the capture and reduction of asbestos emissions by air cleaning equipment and specified work practices. Effective enforcement of the standard is particularly necessary in light of the hazardous nature of asbestos. In order to ensure compliance with the standards, adequate recordkeeping is necessary. In the absence of such information, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

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 Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry for the currently approved 1993 Information Collection Request (ICR). Where appropriate the Agency identified specific tasks and made assumptions, while being consistent with the concept of burden under the Paper Reduction Act.

The estimate was based on the assumption that there was an average of 83,500 sources of demolitions or renovations per year (completed by approximately 7,000 contractors), and that 3,447 sources for milling, manufacturing, fabricating and waste disposal were subject to the standard. For demolitions and renovations, it was estimated that it would take 7,000 person-hours (one hour per respondent) to read the instructions, 304,500 person-hours (43.5 hours per respondent) to write notifications (assuming that there are 120,240 renotifications at 0.25 person-hours per renotification) and excepted waste shipment record reports, 49,420 person-hours (7.1 hours per respondent) to record information and mark vehicles, and 81,951 person-hours (11.7 hours per respondent assuming that one-third take refresher courses and that two-thirds receive initial training) to train supervisors. For milling, manufacturing, and fabricating, it was estimated that there was 430 respondents, and that it would take 430 person-hours (one hour per respondent) to read the instructions, 45,709 person-hours (106.3 hours per respondent)to record the information and mark vehicles, 1,333 person-hours (3.1 hours per respondent) to write the reports and develop the record system. For waste disposal, it was estimated that there were 3,017 respondents, and that it would take 3,017 person-hours (one hour per respondent) to read the instructions, 68,626 person-hours (22.75 hours per respondent) to create and gather the information, and 10,788 person-hours (3.6 hours per respondent) to write the reports.

The average annual burden to the industry over the past three year period from recordkeeping and reporting requirements had been estimated at 572,774 person-hours. The respondents costs were calculated on the basis of $14.50 per hour plus 110 percent overhead. The average annual burden to industry over the past three years was estimated to be $17,440,968.

This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

NESHAP Subpart N; Inorganic Arsenic from Glass Manufacturing Plants

Affected entities: Entities potentially affected by this action are those which are subject to National Emission Standards for Hazardous Air Pollutants (NESHAP), Subpart N, Standard for Inorganic Arsenic Emissions from Glass Manufacturing Plants.

Title: Subpart N, Standard for Inorganic Arsenic Emission from Glass manufacturing Plants. OMB Control Number: 2060–0043, Expiration date: July 31, 1996.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for arsenic emissions from glass manufacturing facilities were proposed on July 20, 1983 and promulgated on August 4, 1986 and amended to add an alternative test method on May 31, 1990.

Owners or operators of sources covered by these standards are subject to the recordkeeping and reporting requirements of the standards as well as those standards prescribed in the General Provisions of the NESHAP.

Owners or operators of the affected facilities described must make the following one-time-only reports: application for approval of construction or modification (new sources) or a source report (existing sources or new sources with initial start-up preceding effective date of standard); and notification of anticipated and actual dates of start-up. Calculations estimating new emission levels must be reported whenever a change of operation is made that would potentially increase emissions. A detailed discussion of the requirements for each of the above reports and the recordkeeping follows.

Owners or operators of any new source to which the standard applies must submit an application for approval of construction. This application must include the name and address of the applicant, the location or proposed location of the source, and technical information describing the source. The technical information should include the proposed nature, size, design, operating design capacity, and method of operation of the source, including a description of pollution control equipment. The technical information should also include calculations of emission estimates.

Any owner or operator of an affected source with an initial start-up after the effective date of these standards must provide a notification of anticipated and actual start-up dates. Deadlines for these notifications are found at 40 CFR 61.09.

Sources subject to these standards are required to demonstrate initial compliance through emission tests. In addition, a continuous monitoring system for the measurement of the opacity of emissions from any control device must be installed and operated. Records of continuous emission monitoring (CEM) results and other data needed to determine emission concentrations shall be maintained at the source and made available for inspection for a minimum of two years.

A written report of each period for which emission rates exceeded the emission limits is required semiannually. All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional office. Applications and source reports are sent directly to the EPA Regional office. Applications and source reports are used to inform the Agency or delegated authority when a source becomes subject to the standards, and the nature of that source. Notification of start-up informs the reviewing authority at what date the source becomes subject to the standards. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated.

Reports, including calculations estimating any subsequent emission levels, are necessary to keep the Agency informed about the source's activities in terms of hazardous air pollutant emissions.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

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: At the writing of the previous ICR there were approximately 47 sources. No additional sources are expected to become subject to the standard in the next three years. The current ICR estimates average annual burden to the industry to be 6,769 person hours. The respondent costs have been calculated on the basis of $14.50 per hour plus 110 percent overhead rate. The current ICR also estimates the average annual burden to the industry is $206,116.

The following is a breakdown of burden used in the ICR: Owners and operators of glass melting furnaces seeking to comply with the emission limits in the standards (rather than the percent reduction requirements) are required to calculate arsenic emissions every 6 months for both the preceding and forthcoming 12 month periods for each arsenic containing glass type to be produced during those periods. This calculation takes into account changes in production rates, types of glass produced, and other factors that might affect the uncontrolled arsenic emissions. It is estimated that 43 of the 47 sources will calculate mass balance and calculate an emissions estimate. The current ICR estimates that it will take 8 hours to calculate mass balance and 8 hours to estimate emissions. Both calculations will take place twice per year. The standards require that the rates and factors used in the calculation be recorded. It is estimated that it will take 40 hours to record this information. Should these calculations reveal that the standards were exceeded during the preceding 12-month period, the owner or operator is required to report this fact to the Administrator. It is estimated that 2 of the 47 sources will have excess emissions once per year and that it will take 16 hours to prepare the report. This notification allows the Administrator to determine when a furnace has emitted arsenic into the atmosphere in excess of the level prescribed by the standards and to see that remedial action is taken.

In certain instances, such as periods during which maintenance of the control device is performed, the owner or operator of a facility may apply to the Administrator for approval to bypass the control device for a limited period of time. This application not only informs the Administrator of the owner or operator's intent to bypass the control device, but also allows the Administrator to determine whether the reasons for the bypass are adequate and whether steps are being taken to minimize emissions during the bypass period. It is estimated that 4 of the 47 sources will apply for a bypass waiver once per year and it will take 6 hours to prepare the application.

These estimates include the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

MACT NESHAP Subpart L: Coke Oven Batteries

Affected entities: Entities potentially affected by this action are those owners or operators of new and existing by-product and non-recovery coke oven batteries.

Title: National Emission Standards for Coke Oven Batteries, Part 63, Subpart L; OMB No. 2060–0253; EPA No. 1362.03; expiration date: October 30, 1996.

Abstract: The owners of new and existing coke oven batteries are require to daily monitored coke oven emissions values by a certified observer for each emission point and calculate the 30-run rolling average. All respondents shall prepare a startup, shutdown, and malfunction plan and a coke oven emission control work practice plan. The work practice procedures in the plan (including associated recordkeeping requirements) would be triggered by exceedances of an applicable visible emission limitation for a regulated emission point. If a malfunction occurred, respondents must notify the enforcement agency and follow up with a written report. A report also would be required if coke oven gas were vented through a bypass/bleeder stack and not flared as required under the rule.

All respondents would be required to submit one-time notifications to elect a compliance track and to certify initial compliance. If applicable, respondents also would submit one-time notifications or requests for (1) constructing a new, brownfield, or padup rebuild by-product coke oven battery using a new recovery technology; (2) restarting a cold-idle battery shutdown prior to November 15, 1990; (3) obtaining an exemption from control requirements for bypass/bleeder stacks by committing to permanent closure of a battery or using an equivalent alternative control system for the stacks; and (4) obtaining an alternative standard for coke oven doors on a battery equipped with a shed. Respondents also would submit initial and semiannual compliance certifications, maintain specified records, and provide copies of records and reports upon request to the authorized union representative.

Records and reports are necessary to enable the Administrator to identify new, modified, or reconstructed sources subject to the standards (and for batteries on the deferral route, which standards would apply) and to ensure that the emission limitations, work practice requirements, and other provisions of the national emission standards are being implemented and achieved.

The information and data will be used by EPA and states to: (1) identify batteries subject to the standards; (2) ensure that MACT and LAER are properly applied; and (3) ensure that daily monitoring and work practice requirements are implemented as required. Effective enforcement of the standard is particularly necessary in light of the hazardous nature of coke oven emissions.

Based on recorded and reported information, EPA and states can identify compliance problems and what records or processes should be inspected at the plant. The records the plants would maintain would help indicate whether plants are in compliance with the standard, reveal misunderstanding about how the standard is to be implemented, and indicate to EPA whether plant personnel are operating and maintaining their process equipment properly.

Reporting and recordkeeping requirements on the part of the respondent are mandatory, required under Sections 112 and 114 of the Clean Air Act as amended. All information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, Part 2, Subpart B—Confidentiality of Business Information (See 40 CFR 2; 41 FR 36902, September 1, 1976; amended by 43 FR 39999, September 8, 1978; 43 FR 42251, September 28, 1978; 44 FR 17674, March 23, 1979).

An Agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

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 total annual hours were estimated to be 73,825 and the recordkeeping and reporting burden was estimated to average 2,461 hours per respondent per year. The total annual cost was estimated to average $2,519, 102 based on 30 respondents (29 by-product plants with a total of 82 batteries and 1 non-recovery plant). Costs were based on the following hourly rates: technical at $35, management at $51, and clerical at $16.

This analysis was based on monitoring, reporting and recordkeeping requirements that would be implement by all plants with existing and new coke oven batteries. The following activities were addressed in calculating the respondent burden: work practice plan; startup, shutdown, malfunction plan; monitoring by certified observer; certification program; monitor of oven pressure; work practices procedures; notifications and written reports required (see discussion that follows for assumptions); information gathering and recording; and training. We made several assumptions for both by-product plants and non-recovery plants in calculating the burden associated with this regulation, as described below.

By-product plants are required to have daily performance tests for each emission point on each battery conducted by a certified observer provided by the state. Therefore, respondent will reimburse the State through permit fees for all costs associated with daily inspections using the formula provided in the standard. Other indirect costs attributable to respondents would include the cost of observer certification. It was assumed in this analysis that of the 29 by-product plants only 10% would be required to implement the work practice procedures, specified in the work practice plan, which is require following the second independent exceedance of an applicable visible emission limitation for an emission point. It was also assumed in the analysis that 10% of the 29 plants would experience a venting episode where emissions are released through bypass/bleeder stacks without flaring and, therefore, require to submit a notification and written report to EPA.

Non-recovery plants are not required to use a certified observer to monitor the oven pressure to control emissions from coke oven doors. They are subject to work practices for charging operation for which they need to keep records.

Other general assumptions made in the burden estimate analysis include: (1) one plant per year will submit a notification for construction or reconstruction, use of new recovery technology, and startup of cold-idle batteries; (2) enforcement agency will receive six requests for an alternative door standard; (3) two plants would permanently close batteries and would be require to submit a notification; (4) all plants will submit initial compliance certifications, semiannual compliance certifications, and a notification as to election of a compliance track; (5) all plants would install flares; (6) no requests for an alternative control system would be submitted to the enforcement agency; and (7) 2 of the 30 existing plants may experience malfunction and, therefore are require to submit a notification and a written report to the enforcement agency.

This burden considered the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

MACT Subpart M; PCE Dry Cleaning Facilities

Affected entities: Entities potentially affected by this action are those which are subject to NESHAP Subpart M, owners or operators of dry cleaning facilities using perchlorethylene (PCE) as a solvent.

Title: NESHAP Subpart M, Dry Cleaning Facilities/Perchloroethylene (PCE), OMB number 2060–0234, expires October 31, 1996.

Abstract: The information collected is needed to determine which sources are subject to the regulation and whether these sources are in compliance with the standards. EPA is required under Section 112(d) of the Clean Air Act (Act) to regulate emissions of 189 hazardous air pollutants (HAPs) listed in Section 112(b) of the Act. One of these pollutants, PCE, is emitted from dry cleaning facilities. In the Administrator's judgment, PCE emitted from dry cleaning facilities causes, or contributes significantly, to air pollution that may reasonably be anticipated to endanger pubic health. Consequently, National Emission Standards for Hazardous Air Pollutants (NESHAP) for this source category have been developed. Certain records and reports are necessary to enable the Administrator to identify sources subject to the standards and to ensure that the standard, which is based on maximum achievable control technology (MACT) or generally available control technology (GACT), is being achieved. The Agency will use the information to identify sources subject to the standards to ensure that MACT or GACT is being properly applied, monitoring is being conducted on a weekly basis to ensure that the emission control devices are being properly operated and maintained on a continuous basis to reduce vented PCE emissions, and leak detection and repair are being conducted on a weekly basis to reduce fugitive PCE emissions.

The records and reports are necessary to enable the EPA to identify facilities that may not be in compliance with the standard. Based on reported information, the EPA can decide which facilities should be inspected/receive compliance assistance, and what records or processes should be inspected at these facilities. The records that the facilities maintain would indicate to the EPA whether they are operating and maintaining equipment properly to control vented emissions and whether transfer emissions and other fugitive emissions are being properly controlled. To minimize the burden, much of the information the Agency needs to determine compliance would be recorded and retained on site at the facility. Such information would be reviewed by enforcement/compliance assistance personnel during an inspection and would not need to be routinely reported to the EPA.

The recordkeeping and reporting requirements under Subpart M are mandatory under 40 CFR 63.324. These requirements are as follows:

5-year retention of records (40 CFR 63.324(d))
Records of solvent purchase per month (40 CFR 63.324(d)(1))
Records of calculation and result of yearly PCE consumption (40 CFR 63.324(d)(2))
Records of weekly or biweekly inspections (40 CFR 63.324(d)(3))
Records of dates of repair or purchase orders (40 CFR 63.324(d)(4))
Records of monitoring (40 CFR 64.324(d) (5) and (6))
Initial report requirements (all) (40 CFR 63.324.(a))
Report on compliance (40 CFR 63.324(b))
Report on facility status change to a major source (40 CFR 63.324(c))
Report on exceedance of low solvent consumption exemption level (40 CFR 63.324(c))

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

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: Since the dry cleaning industry is considered to be comprised primarily of small businesses, the EPA took special steps to ensure that the burdens imposed on small businesses were reasonable. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. No additional third-party burden is associated with this ICR.

The individual burdens for each of the recordkeeping and reporting requirements applicable to the industry are consistent with the concept of burden under the Paperwork Reduction Act. The annual burden estimates for reporting and recordkeeping for an average respondent are derived from estimates based on the EPA's experience with other standards, and from discussions with industry representatives.

The previous ICR estimated the total annual burden to industry to be $10,131,466. This was based on total annual burden of 1,282,577 person hours for all respondents. For an average dry cleaning facility, the total annual hours were 70 and the total cost was $563. Costs were determined based on management hours at $23.00/hr and employee hours at $7.60/hour. In the current ICR, labor costs are assumed to be $21.00/hour × 110% overhead, or approximately $41.00/hour.

In addition, this estimate was based on the assumption that there will be 2,571 new affected facilities each year, but that the overall number of facilities will remain constant as the new owners will take over old existing facilities.

In estimating the burden associated with reporting requirements, the following activities were taken into account: reading the instructions, gathering information and writing the report. There are four types of possible reports including: the initial report, solvent consumption report, compliance method report, and report in exceeding the consumption cutoff. Only new sources will have to comply with the reporting requirements. For new sources, it is estimated that it would take an average total of 1 person hour to read the instructions, 4 person hours to gather information for reports. It is estimated that it would take new sources 4.25 person hours to write the required reports. It is estimated that there would be 1 occurrence per respondent per year for each of the above listed reporting burdens. The total cost for new sources of complying with the reporting requirements is $21,211.00.

The recordkeeping requirements include the following activities: reading instructions, planning activities, developing a record system, entering the information, and training personnel. Records must be kept on solvent consumption, weekly inspections and biweekly inspections, including leak detection efforts. Only new facilities will have to plan activities and develop a record system. It is estimated that it will take each new source 4 person hours the first year they are in operation to plan activities and develop a record system. It is estimated that it will take new and existing sources 866 person hours per year to complete the other recordkeeping requirements. It is estimated that, for each of the 2,571 new sources, there will be 1 occurrence of planning activities their first year in operation and 3 occurrences of developing a record system that first year. For the 2,571 new sources and the 22,519 existing sources, there will be a total of 78 occurrences per respondent per year of leak detection/repair. There will be 90 total occurrences of entering information in records and 2 occurrences of training personnel per respondent per year. The total cost to new sources of complying with the recordkeeping requirements is $61,644.00. The total cost to all existing sources to comply with the record keeping requirements is $19,501,454.00. Therefore, the total annual cost of complying with the recordkeeping requirements for all sources is $19,563,098.00.

Wood Preserving Containing Arsenic

Affected entities: Entities potentially affected by this action are those that treat wood with preservative formulations containing arsenic. The Standard Industrial Code for the wood preserving industry is 2491.

Title: Wood Preservatives—Submission of Information Regarding Arsenic Exposure Levels in Wood Treatment Plants.

Abstract: This information collection provides wood treaters that use arsenic formulations a way of exempting themselves from the FIFRA pesticide label requirements, which dictate that all applicators of the product wear NIOSH-approved respirators. This opportunity for facilities to exempt themselves from the respirator requirements is called the Permissible Exposure Limit Monitoring Program (PEL) and it is incorporated in the final settlement of the ''Notice of Intent To Cancel Registrations of Pesticide Products Containing Creosote,

Pentachlorophenol (Including Its Salts) and Inorganic Arsenic'' which is published in the July 1984 Federal Register, Vol. 49, No. 136, p. 28674. Facilities that choose to participate in the voluntary PEL can do the following to exempt themselves from the respirator requirements. First, the facility needs to conduct air monitoring for air-borne arsenic. Facilities that have air-borne arsenic levels that are higher than the permissible exposure limit would have to continue to require plant personnel to wear respirators. If a facility's air-borne arsenic levels are below the permissible exposure limit they are no longer required to wear respirators. Depending on how close the levels are to the permissible exposure limit, the facility is required to retest periodically or fill out a checklist, which indicates if arsenic exposure levels are likely to increase due to changes in the facility's industrial process.

Participating facilities must submit the air monitoring test results to EPA or if arsenic levels are low and testing is not required then they can simply fill out the checklist and submit it to EPA. All submissions must certify that the information provided is accurate.

EPA uses the certification and air monitoring data to determine if the wood preserving facility is complying with the air-borne arsenic levels set by the cancellation order, which was set to ensure that plant personnel are not exposed to levels of arsenic that pose an unacceptably high health risk. This data will also be used to monitor which wood preserving facilities are participating in the PEL program and thus could be exempt from the pesticide label requirement to wear a respirator. Because the information that is submitted to EPA would not be confidential business information the submittals from the facilities will not be handled as such.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

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: This information collection assumes that of the estimated 300 wood preserving plants that use arsenic formulation, 200 of these participate in the PEL program. The majority of the participants, 150, have conducted monitoring in the past that has demonstrated that arsenic levels are well below the permissible exposure level. These facilities that are not required to test are required to simply fill out and submit the 6 question PEL checklist, which asks if the facility has changed their process and in doing so may have increased the levels of air-borne arsenic. These 150 plants will spend .75 hours on each submittal at a cost of $14.95 per hour in wages and 110% in overhead for a total cost of $30.45 per hour. Thus each facility will spend $22.84 for the annual submission. Collectively, the 150 plants will spend $3,426 on filling out and submitting the checklist.

EPA estimates that each of the approximately 50 plants that are required to monitor during a given year will spend 17.5 hours on preparing and conducting the tests. When calculating cost EPA assumes an hourly wage of $14.95 with 110% added as overhead for a total hourly cost of $30.45. Thus, a single facility will spend approximately $532 on each test. Collectively, the 50 plants that conduct monitoring will spend $26,644 on monitoring. The total cost for monitoring and submittal costs is $30,070.

This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: March 5, 1996.

Elaine Stanley,

Director, Office of Compliance.

[FR Doc. 96–7279 Filed 3–25–96; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5446–9]

Notice of Proposed Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (''CERCLA''), 42 U.S.C. 9622, notice is hereby given that a proposed purchaser agreement associated with property adjacent to the Foote Mineral Superfund Site, Exton, PA, was executed by the Agency on March 15, 1996 and is subject to final approval by the United States Department of Justice. The Purchaser Agreement would resolve certain potential EPA claims under Section 107 of CERCLA, 42 U.S.C. 9607, against Key West Connection Corporation. (''The purchasers''). The settlement would require Key West Connection Corporation to pay $5,000 within five (5), days of the effective date of the Agreement to the EPA Hazardous Substances Superfund.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

DATES: Comments must be submitted on or before April 25, 1996.

AVAILABILITY: The proposed agreement and additional background information relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. A copy of the proposed agreement may be obtained

from Suzanne Canning, U.S. Environmental Protection Agency, Regional Docket Clerk (3RC00), 841 Chestnut Building, Philadelphia, PA 19107. Comments should reference the ''Foote Mineral Superfund Site; Key West Connection Corporation'' and ''EPA Docket No. III–96–07–DC'', and should be forwarded to Suzanne Canning at the above address.

FOR FURTHER INFORMATION CONTACT: Bonnie A. Pugh (3RC23), Assistant Regional Counsel, U.S. Environmental Protection Agency, 841 Chestnut Building, Philadelphia, PA 19107, Phone: (215) 597–8448.

Dated: March 15, 1996.

Stanley L. Laskowski,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region III.

[FR Doc. 96–7278 Filed 3–25–96; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–44623; FRL–5358–3]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on n-butyl acetate (CAS No. 123–86–4), submitted pursuant to a testing consent order under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551; e-mail:TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that the results of testing conducted pursuant to testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for n-butyl acetate were submitted by the Chemical Manufacturers Association Oxo Process Panel on behalf of the following sponsors: Aristech Chemical Corporation, BASF Corporation, BP Chemicals, Inc., Eastman Chemical Company, Hoechst Celanese Chemical Group, Inc., Rhone-Poulenc, Inc., Shell Oil Company, Union Carbide Corporation, and Vista Chemical Company pursuant to a consent order at 40 CFR 799.5000. They were received by EPA on March 6, 1996. The submission includes a final report entitled ''n-Butyl Acetate, A Two-week Inhalation Probe Study in the Rat.'' This chemical is used as a solvent for coatings, as a process solvent, and for miscellaneous solvent uses.

EPA has initiated its review and evaluation process for this data submission. At this time, the Agency is unable to provide any determination as to the completeness of the submission.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44623). This record includes copies of all studies reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. B–607 Northeast Mall, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Test data.

Dated: March 19, 1996.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 96–7274 Filed 3–25–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Licensee Order To Show Cause

The Acting Chief, Audio Services Division, Mass Media Bureau, has before her the following matter:

Licensee	City/State	MM docket No.
Cen-Ten Productions, Inc.. (Regarding the silent status of Station KJCO (FM))	Yuma, Colorado..	96–49

Pursuant to Section 312(a)(3)(and (4) of the Communications Act of 1934, as amended, Cen-Ten Productions, Inc. has been directed to show cause why the license for Station KJCO (FM) should not be revoked, at a proceeding in which the above matter has been designated for hearing concerning the following issues:

(1) To determine whether Cen-Ten Productions, Inc. has the capability and intent to expeditiously resume the broadcast operations of KJCO (FM), consistent with the Commission's Rules.

(2) To determine whether Cen-Ten Productions, Inc. has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules.

(3) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Cen-Ten Productions, Inc. is qualified to be and remain the licensee of Station KJCO (FM).

A copy of the complete *Show Cause Order and HDO* in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, N.W., Washington, D.C. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037 (telephone 202–857–3800).

Federal Communications Commission

Linda Blair,

Acting Chief,

Audio Services Division, Mass Media Bureau.

[FR Doc. 96–7224 Filed 3–25–96; 8:45 am]

BILLING CODE 6712–01–P

Licensee Order To Show Cause

The Acting Chief, Audio Services Division, Mass Media Bureau, has before her the following matter:

Licensee	City/State	MM Docket No.
Oakhill-Jackson Economic Development Corp..	Cedar Rapids, Iowa.	96–47.

(regarding the silent status of noncommercial, educational station KOJC (FM))

Pursuant to Section 312(a)(3) and (4) of the Communications Act of 1934, as amended, Oakhill-Jackson Economic Development Corp. has been directed to show cause why the license for Station KOJC (FM) should not be revoked, at a proceeding in which the above matter has been designated for hearing concerning the following issues:

(1) To determine whether Oakhill-Jackson Economic Development Corp. has the capability and intent to expeditiously resume the broadcast operations of KOJC (FM), consistent with the Commission's Rules.

(2) To determine whether Oakhill-Jackson Economic Development Corp.

has violated Sections 73.561 and/or 73.1750 of the Commission's Rules.

(3) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Oakhill-Jackson Economic Development Corp. is qualified to be and remain the licensee of Station KOJC (FM).

A copy of the complete Show Cause Order and HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street NW., Washington, D.C. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037 (telephone 202–857–3800).

Federal Communications Commission.

Linda Blair,

Acting Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 96–7225 Filed 3–25–96; 8:45 am]

BILLING CODE 6712–01–P

Licensee Order To Show Cause

The Acting Chief, Audio Services Division, Mass Media Bureau, has before her the following matter:

Licensee	City/State	MM docket No.
Rainy River Community College. (Regarding the silent status of noncommercial, educational Station KICC (FM))	International; Falls, Mn..	96–48

Pursuant to Section 312(a)(3) and (4) of the Communications Act of 1934, as amended, Rainy River Community College has been directed to show cause why the license for noncommercial, educational Station KICC (FM) should not be revoked, at a proceeding in which the above matter has been designated for hearing concerning the following issues:

(1) To determine whether Rainy River Community College has the capability and intent to expeditiously resume the broadcast operations of KICC (FM), consistent with the Commission's Rules.

(2) To determine whether Rainy River Community College has violated Sections 73.561 and/or 73.1750 of the Commission's Rules.

(3) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Rainy River Community College is qualified to be and remain the licensee of Station KICC (FM).

A copy of the complete Show Cause Order and HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, N.W., Washington, D.C. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037 (telephone 202–857–3800).

Federal Communications Commission.

Linda Blair,

Acting Chief, Audio Services Division Mass Media Bureau.

[FR Doc. 96–7223 Filed 3–25–96; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed new, revised, or continuing information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the proposed extension to a currently approved information collection, which is assigned OMB Control Number 3067–0077. The current approval expires May 31, 1996.

Background

The National Flood Insurance Program regulations require the elevation or floodproofing of newly constructed structures in designated special flood hazard areas. As part of the agreement for making flood insurance available in a community, the NFIP requires the community to adopt a floodplain management ordinance containing certain minimum requirements intended to reduce future flood losses. One such requirement is that the community obtain the elevation of the lowest flood (including basement) of all new and substantially improved structures, and maintain a record of all such information. These data may be generated and retained as part of the communities permit issuance and building inspection processes. The Elevation Certificate is one convenient way for a community to comply with this requirement. The Floodproofing Certificate may similarly be used to establish the required record in those instances when floodproofing for non-residential structures is a permitted practice.

Collection of Information

Title. Post Construction Elevation Certificate/Floodproofing Certificate.

Type of Review. Extension.

Form Numbers. FEMA Form 81–31, Elevation Certificate, FEMA Form 81–65, Floodproofing Certificate for Non-Residential Structures.

Abstract. The Elevation Certificate and Floodproofing Certificate are adjuncts to the application for flood insurance. The certificates are required for proper rating of post-Flood Insurance Rate Map (FIRM) structures, which are buildings constructed after publication of the FIRM, for flood insurance in Special Flood Hazard Areas. In addition, the Elevation Certificate is also needed for pre-FIRM structures being rated under post-FIRM flood insurance rules. The certificates provide community officials and others standardized documents to readily record needed information.

The certificates are supplied to insurance agents, community officials, surveyors, engineers, architects, and NFIP policyholders/applicants. The community officials or other professionals provide the elevation data required to document conformance with floodplain management regulations and for the applicants so that actuarial insurance rates can be charged. The elevation data is transmitted to the NFIP by the insurance applicant or agent with the appropriate NFIP policy forms.

The data is also used to assist FEMA in measuring the effectiveness of the NFIP regulations in eliminating or decreasing damage caused by flooding and the appropriateness of the NFIP premium charges for insuring property against the flood hazard.

Affected Public: Individuals and households, Businesses or other for-profit, Not-for-profit institutions, Farms, and State, local or tribal governments.

FEMA forms	No. of respondents	Hours per response	Annual burden hours
81–31	14,800	2.25	33,300
81–65	240	3.25	780

Based on comments from respondents, the burden estimates for

each of the FEMA forms have been reestimated.

Estimated Total Annual Burden Hours. 34,080.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Direct all comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 311, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection can be obtained by contacting the person listed in the **ADDRESSES** section of this notice.

Dated: March 15, 1996.

Thomas Behm,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 96–7235 Filed 3–25–96; 8:45 am]

BILLING CODE 6718–01–P

[FEMA–1088–DR]

New Jersey; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New Jersey (FEMA–1088–DR), dated January 13 1996, and related determinations.

EFFECTIVE DATE: March 2, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Marianne Jackson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Agnes Mravcak as Federal Coordinating officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 96–7230 Filed 3–25–96; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1083–DR]

New York; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New York (FEMA–1083–DR), dated January 12, 1996, and related determinations.

EFFECTIVE DATE: March 2, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Marianne Jackson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Agnes Mravcak as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 96–7233 Filed 3–25–96; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1099–DR]

Oregon; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oregon, (FEMA–1099–DR), dated February 9, 1996, and related determinations.

EFFECTIVE DATE: March 13, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Oregon, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 9, 1996:

The Warm Springs Indian Reservation for Public Assistance and Hazard Mitigation Assistance (already designated for Individual Assistance); and,

Coos County for Hazard Mitigation (already designated for Individual Assistance and Public Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96–7231 Filed 3–25–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–3117–EM]

Texas; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Texas (FEMA–3117–EM), dated February 23, 1996, and related determinations.

EFFECTIVE DATE: February 23, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 23, 1996, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the imminent fire threat in certain areas of the State of Texas, resulting from extreme fire hazards beginning this date, is of sufficient severity and magnitude to warrant an emergency declaration under Title V, Section 501(a) of

the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act''). I, therefore, declare that such an emergency exists in the State of Texas.

You are authorized to coordinate with the U.S. Forest Service to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to mobilize and prestage Federal fire suppression resources, and reimburse costs associated with predeploying those resources. Utilization and reimbursement for such use of predeployed resources will be at the recommendation of the U.S. Forest Service for fires designated under Title IV, Section 420 of the Stafford Act.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act under Title V will be limited to 75 percent of the total eligible costs.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Dell Greer of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Texas to have been affected adversely by this declared emergency:

Angelina, Bell, Bexar, Brown, Cass, Coryell, Dallas, Denton, Fayette, McLennan, Montgomery, Palo Pinto, Rusk, San Saba, Taylor, Tarrant, Tom Green, Travis, Tyler, Wise and Wichita Counties. FEMA has been authorized to mobilize and prestage Federal fire suppression resources, and reimburse costs associated with predeploying those resources under Title V, Section 501(a) of the Stafford Act. Utilization and reimbursement for such use of predeployed resources will be at the recommendation of the U.S. Forest Service for fires designated under Title IV, Section 420 of the Stafford Act.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 96–7234 Filed 3–25–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–3117–EM]

Texas; Amendment to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of Texas, (FEMA–3117–DR), dated February 23, 1996, and related determinations.

EFFECTIVE DATE: March 15, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the State of Texas, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of February 23, 1996:

Childress County for emergency assistance as defined in this declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96–7236 Filed 3–25–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1101–DR]

Vermont; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Vermont (FEMA–1101–DR), dated February 13, 1996, and related determinations.

EFFECTIVE DATE: March 13, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective February 2, 1996.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96–7232 Filed 3–25–96; 8:45 am]

BILLING CODE 6718–02-P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

International Logistics Corporation, 1701 Quincy Street, Suite #5, Naperville, IL 60540; Officers: John D. Staton, President/CEO, John M. Staton, Vice President

Cibao Furniture Inc., 14 East 167th Street, Bronx, NY 10452; Officer: Jose Augusto Perdomo Mojica, President

CFS International, Inc., 2700 Broening Highway, Suite 211–A, Baltimore, MD 21222; Officers: Frank E. Cashman, Jr., President, Karen P. Cashmen, Vice President

Ark International Shipping, 116 E. Edgebrook, Suite 1114, Houston, TX 77034; Nabil Tamimi, Sole Proprietor

Bobrek Cargo (USA) Inc., 8730 N.W. 101 Street, Medley, FL 33178; Officers: Maria A. Mohandas, President, Ana Cristina Bobrek, Vice President,

Vernon Paul Chadwick, 5915 Hoover Avenue, Indian Trail, NC 28079; Sole Proprietor

H&S International, Inc., 7955 N.W. 21st Street, Miami, FL 33122; Officers: Pedro A. Gonzalez, President, Christina A. Gonzalez, Vice President

Only Forwarding Services, Inc., 2315 N.W. 107th Avenue, 1M17, Miami, FL 33172; Officer: Hassain Issa, President

Pactrans Marine, Inc., 9520 La Cienega Blvd., Inglewood, CA 90301; Officers: Terrence Lynch, Director, C.T. Tsui, Vice President

Peter Wittwer North America Inc. Shipping Agents, 2401 West Bay Drive, Suite 15, Largo, FL 34640; Officers: Siegfried Adam, President, Carolyn J. Haack, Vice President

Dated: March 20, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–7220 Filed 3–25–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank

holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 8, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. O. Perry Earle, III, Greenville, South Carolina; to acquire an additional 1.51 percent, for a total of 10.35 percent, of the voting shares of Greenville Financial Corporation, Greenville, South Carolina, and thereby indirectly acquire Greenville National Bank, Greenville, South Carolina.

Board of Governors of the Federal Reserve System, March 20, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–7176 Filed 3–25–96; 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 18, 1996.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Old National Bancorp, Evansville, Indiana; to acquire 100 percent of the voting shares of The National Bank of Carmi, Carmi, Illinois.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Kanbanc, Inc., Overland Park, Kansas; to acquire 51.6 percent of the voting shares of Citizens Bank of Norborne, Norborne, Missouri.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. East Texas Financial Corporation, Kilgore, Texas, and *East Texas (Delaware) Holdings, Ltd.*, Wilmington, Delaware; each to acquire a total of 54.35 percent of the voting shares of Gladewater National Bank, Gladewater, Texas.

Board of Governors of the Federal Reserve System, March 20, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96-7175 Filed 3-25-96; 8:45 am]

BILLING CODE 6210-01-F

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, April 1, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Policy regarding disclosure of Federal Reserve Board employees' salaries.
2. Federal Reserve Bank and Branch director appointments.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 22, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–7493 Filed 3–22–96; 3:35 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Revised Jurisdictional Thresholds for Section 8 of the Clayton Act

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission announces the revised thresholds for interlocking directorates required by the 1990 amendment of section 8 of the Clayton Act. Section 8 prohibits, with certain exceptions, one person from serving as a director or officer of two competing corporations if two thresholds are met. Competitor corporations are covered by section 8 if each one has capital, surplus, and undivided profits aggregating more than $10,000,000, with the exception that no corporation is covered if the competitive sales of either corporation are less than $1,000,000. Section 8(a)(5) requires the Federal Trade Commission to revise those thresholds annually, based on the change in gross national product. The new thresholds, which take effect immediately, are $13,239,000 for section 8(a)(1), and $1,323,900 for section 8(a)(2)(A).

EFFECTIVE DATE: March 26, 1996.

FOR FURTHER INFORMATION CONTACT: James Mongoven, Bureau of

Competition, Office of Policy and Evaluation, (202) 326–2879.

(Authority: 15 U.S.C. 19(a)(5)).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 96–7290 Filed 3–25–96; 8:45 am]

BILLING CODE 6750–01–M

[File No. 922–3308]

Cancer Treatment Centers of America, Inc.; Midwestern Regional Medical Center, Inc.; Memorial Medical Center and Cancer Institute, Inc.; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require the Arlington, Illinois-based company and two affiliated hospitals to substantiate future claims regarding the success or efficacy of their cancer treatments and to ensure that testimonials they use do not misrepresent the typical experience of their patients. The consent agreement settles allegations that the company and the hospitals made false and unsubstantiated claims in advertising and promoting their cancer treatments.

DATES: Comments must be received on or before May 28, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Richard F. Kelly, Federal Trade Commission, H–200, 6th and Pennsylvania Ave, NW, Washington, DC 20580. 202–326–3304. Walter C. Gross, III, Federal Trade Commission, H–200, 6th and Pennsylvania Ave, NW, Washington, DC 20580. 202–326–3319.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Before Federal Trade Commission

In the Matter of Cancer Treatment Centers of America, Inc., a corporation, Midwestern Regional Medical Center, Inc., a corporation, and Memorial Medical Center and Cancer Institute, Inc., a corporation; Agreement Containing Consent Order to Cease and Desist.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Cancer Treatment Centers of America, Inc., a corporation, Midwestern Regional Medical Center, Inc., a corporation, and Memorial Medical Center and Cancer Institute, Inc., a corporation (hereinafter sometimes referred to as ''proposed respondents'' or ''respondents''), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Cancer Treatment Centers of America, Inc., a corporation, Midwestern Regional Medical Center, Inc., a corporation, and Memorial Medical Center and Cancer Institute, Inc., a corporation, and their attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent Cancer Treatment Centers of America, Inc., is an Illinois corporation, with its principal office or place of business at 3455 Salt Creek Lane, Suite 200, Arlington, Illinois 60005–1090.

Proposed respondent Midwestern Regional Medical Center, Inc., is an Illinois corporation, with its principal office or place of business at Shiloh Boulevard and Emmaus Avenue, Zion, Illinois 60099.

Proposed respondent Memorial Medical Center and Cancer Institute, Inc., is an Oklahoma corporation, with its principal office or place of business at 8181 South Lewis Avenue, Tulsa, Oklahoma 74137.

2. Proposed respondents admit all the jurisdictional facts set forth in the attached draft complaint.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 504.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and service its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents: (a) Issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following Order to cease and desist in disposition of the proceeding; and (b) make information public in respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

7. Proposed respondents have read the attached draft complaint and the following Order. Proposed respondents understand that once the Order has been issued, they will be required to file one or more compliance reports showing

that they have fully complied with the Order. Proposed respondents further understand that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

Definitions

For the purposes of this Order, the following definitions shall apply:

A. ''Competent and reliable scientific evidence'' shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

B. ''Cancer'' shall mean any of various malignant neoplasms characterized by the proliferation of anaplastic cells that tend to invade surrounding tissue and may metastasize to new body sites or the pathological condition characterized by such growths.

C. ''Independent organization or facility'' means any organization, association, or entity, whether or not for profit, which is not owned or controlled, directly or indirectly, by respondents, individually or collectively.

D. ''Endorsement'' means any advertising message (including verbal statements, demonstrations or depictions of the name, signature, likeness or other personal identifying characteristics of any individual or the name or seal of an organization) which message consumers are likely to believe reflects the opinions, beliefs, findings, or experience of a party other than the sponsoring advertiser.

I

It is ordered that respondents Cancer Treatment Centers of America, Inc., a corporation, Midwestern Regional Medical Center, Inc., a corporation, and Memorial Medical Center and Cancer Institute, Inc., a corporation, their successors or assigns, (hereinafter sometimes referred to as ''respondents''), and respondents' officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other advice, including franchisees or licensees, in connection with the advertising, promotion, offering for sale, or sale of products or services purporting to treat or cure disease, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, about either:

(1) The existence or content of statistical data that purports to document survivorship rates or cure rates for cancer patients in respondents' treatment facilities, or

(2) Cure rates or survivorship rates either for any of respondents' treatment facilities or for any treatment modality or modalities offered by respondents.

unless, at the time of making any such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, substantiating the representation.

B. Representing, directly or by implication, that any modality for the treatment or mitigation of cancer or its attendant symptoms is approved, endorsed or accepted by any independent organization or facility unless, at the time of making any such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, substantiating the representation.

C. Making any representation, directly or by implication, about the efficacy of any modality that purports to treat or mitigate cancer or its attendant symptoms, unless, at the time of making any such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation.

D. Representing, directly or by implication, that any endorsement of any of respondents' treatment programs that purport to mitigate or cure cancer represents the typical or ordinary experience of members of the public who use the program, unless:

(1) At the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence, that substantiates such representation, or

(2) Respondents disclose clearly, prominently and in close proximity to the endorsement or testimonial either:

(a) What the generally expected results would be for users of such program, or

(b) The limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to experience similar results.

E. Making any representation, directly or by implication, about the performance, safety or benefits of any modality that purports to treat or mitigate cancer, its attendant symptoms or attendant diseases, unless, at the time of making any such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation.

II

It is further ordered that respondents shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change such as dissolution, assignment, or sale resulting in the emergence of a successor corporation(s), the creation or dissolution of subsidiaries, or any other change in the corporation(s) that may affect compliance obligations arising out of this Order.

III

It is further ordered that for three (3) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

IV

It is further ordered that within ten (10) days from the date of service of this order, respondents shall distribute a copy of this Order to each of its officers, agents, representatives, independent contractors and employees who are involved in the preparation and placement of advertisements or promotional materials or who have any responsibilities with respect to the subject matter of this Order; and, shall secure from each such person a signed statement acknowledging receipt of this order.

V

It is further ordered that respondents shall, within sixty (60) days after the date of service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed

consent order from three corporations who operate under the trade name Cancer Treatment Centers of America and offer cancer treatment services to the public. The three corporations are: Cancer Treatment Centers of America, Inc., Midwestern Regional Medical Centers, Inc., and Memorial Medical Center and Cancer Institute, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission has alleged that proposed respondents failed to possess a reasonable basis for claiming that their five year survivorship rates for cancer patients that they treated was ''among the highest recorded.'' The Commission further alleges that representations proposed respondents made about the ability of treatments known as ''whole body hyperthermia'' and ''brachytheraphy'' to successfully treat some cancers and/or improve survivorship rates were also unsubstantiated.

Additionally, the Commission has alleged that proposed respondents claimed that whole body hyperthermia was ''an approved medical procedure,'' implying that the procedure had been approved by an independent agency or medical body when, in fact, it had not. Finally, the Commission has alleged that proposed respondents failed to substantiate advertisements that featured the treatment experiences of former patients and represented, expressly or by implication, that such experiences represented the typical and ordinary experience of consumers of proposed respondents' treatment services.

The proposed consent order addresses the alleged misrepresentations cited in the accompanying complaint by requiring, among other things, that proposed respondents possess a reasonable basis consisting of competent and reliable evidence for any future claims regarding survivorship or cure rates. When appropriate the order would require that such evidence be competent and reliable scientific evidence. Additionally, under the order, any efficacy claims for any modality that purports to treat or mitigate cancer or its attendant symptoms must also be substantiated with competent and reliable scientific evidence.

The order further prohibits proposed respondents from misrepresenting that any independent organization has approved any treatment regimen for cancer. The order also requires that any future claims containing consumer endorsements or testimonials either represent the typical and ordinary experience of consumers of proposed respondents' services or contain a clear and prominent statement referring to the limited applicability of the endorser's experience. Finally, the order requires competent and reliable scientific evidence for any representation about the performance, safety, or benefits of any modality that purports to treat or mitigate cancer, its attendant symptoms or attendant diseases.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 96–7293 Filed 3–25–96; 8:45 am]

BILLING CODE 6750–01–M

[File No. 952–3478]

Johnson & Collins Research, Inc. and Gregor A. Von Ehrenfels; Consent Agreement with Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal laws prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit the Minneapolis-based company from making false or unsubstantiated representations in future advertisements for weight-loss booklets or for other weight-loss products or programs. The consent agreement settles allegations that Johnson & Collins's advertisements for the Total Body Reshaping System and the Super Total Body Shaping System (''TBR System''), which appeared in magazines directed at teenage girls, failed to disclose that the TBR System consisted primarily of booklets containing advice on dieting and exercising.

DATES: Comments must be received on or before May 28, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:

Joel Winston, Federal Trade Commission, S–4002, 6th and Pennsylvania Ave., NW., Washington, DC, 202–326–3153.

Richard L. Cleland, Federal Trade Commission, S–4002, 6th and Pennsylvania Ave., NW., Washington, DC, 202–326–3088.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Before Federal Trade Commission

[File No. 952–3478]

In the Matter of *Johnson & Collins Research, Inc.*, a corporation, and *Gregor A. Von Ehrenfels*, individually and as an officer of said corporation; Agreement Containing Consent Order to Cease and Desist.

The Federal Trade Commission, having initiated an investigation of certain acts and practices of Johnson & Collins Research, Inc., a corporation, and Gregor A. Von Ehrenfels, individually and as an officer of said corporation, hereinafter sometimes referred to as proposed respondents, and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Johnson & Collins Research, Inc., by its authorized officer, and Gregor A. Von Ehrenfels, individually and as an officer of said corporation, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Johnson & Collins Research, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Minnesota, with its office and principal place of business located at 5115 Excelsior Blvd., in the City of Minneapolis, State of Minnesota 55416.

Proposed respondent Gregor A. Von Ehrenfels is an officer of said corporation. Individually or in concert with others, he participates in and/or

formulates, directs, and controls the acts and practices of said corporation and his address is the same as that of said corporation.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

6. This agreement contemplates, that if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) Issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For purposes of this Order;

1. ''Clearly and prominently'' shall mean as follows: (a) In a television or videotape advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. The audio disclosure shall be delivered in a volume and cadence and for a duration sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it.

(b) In a print advertisement, the disclosure shall be in a type size, and in a location, that are sufficiently noticeable so that an ordinary consumer will see and read it, in print that contrasts with the background against which it appears. In multipage documents, the disclosure shall appear on the cover or first page.

(c) In a radio advertisement, the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.

2. ''Competent and reliable scientific evidence'' shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

3. ''Weight-loss product'' shall mean any product or program designed or used to prevent weight gain or to produce weight loss, reduction or elimination of fat, slimming, or caloric deficit in a user of the product or program.

I

It is ordered that respondents, Johnson & Collins Research, Inc., a corporation, its successor and assigns, and its officers; and Gregor A. von Ehrenfels, individually and as an officer of Johnson & Collins Research, Inc.; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of Total Body Reshaping System, Super Total Body Reshaping System, or any substantially similar product, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that such product does not require dieting.

II

It is further ordered that respondents, Johnson & Collins Research, Inc., a corporation, its successors and assigns, and its officers; and Gregor A. von Ehrenfels, individually and as an officer of Johnson & Collins Research, Inc.; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any weight-loss product, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. Such product is effective in causing fast and significant weight loss;

B. Such product is effective in reducing body fat or cellulite;

C. Such product is effective in causing weight loss, fat reduction, or increased muscle tone in specific, desired areas of the body;

D. Such product is effective in burning excess calories, modifying caloric intake, or converting food into energy instead of fat; or

E. Such product has any effect on users' weight, body size or shape, body measurements, appetite,

unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

III

Nothing in Parts I and II of this Order shall prohibit respondents from making

representations which promote the sale of books and other publications, provided that, the advertising only purports to express the opinion of the author or to quote the contents of the publication; the advertising discloses the source of the statements quoted or derived from the contents of the publication; and the advertising discloses the author to be the source of the opinions expressed about the publication. This Part shall not apply, however, if the publication or its advertising is used to promote the sale of some other product as part of a commercial scheme.

IV

It is further ordered that respondents, Johnson & Collins Research, Inc., a corporation, its successors and assigns, and its officers; and Gregor A. von Ehrenfels, individually and as an officer of Johnson & Collins Research, Inc.; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of Total Body Reshaping System, Super Total Body Reshaping System, or any substantially similar product, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, that any such product has any effect on weight or body size, unless respondents disclose, clearly and prominently, that such product consists primarily of a booklet or pamphlet containing information and advice on weight loss.

V

It is further ordered that respondents, Johnson & Collins Research, Inc., a corporation, its successors and assigns, and its officers; and Gregor A. von Ehrenfels, individually and as an officer of Johnson & Collins Research, Inc.; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any weight-loss product, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, that any such weight-loss product has any effect on weight or body size, unless they disclose, clearly and prominently, that dieting and/or increasing exercise is required to lose weight; provided however, that this disclosure shall not be required if respondents possess and rely upon competent and reliable scientific evidence demonstrating that the weight-loss product is effective without either dieting or increasing exercise.

VI

It is further ordered that respondent, Johnson & Collins Research, Inc., shall:

A. Within thirty (30) days after service of this Order, provide a copy of this Order to each of respondent's current principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this Order; and

B. For a period of five (5) years from the date of issuance of this Order, provide a copy of this Order to each of respondent's future principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this Order who are associated with respondent or any subsidiary, successor, or assign, within three (3) days after the person assumes his or her responsibilities.

VII

It is further ordered that five (5) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

VIII

It is further ordered that respondent, Johnson & Collins Research, Inc., shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in its corporate structure, including but not limited to dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, the planned filing of a bankruptcy petition, or any other corporate change that may affect compliance obligations arising out of this Order.

IX

It is further ordered that respondent, Gregor A. von Ehrenfels, shall, for a period of three (3) years from the date of issuance of this Order, notify the Commission within thirty (30) days of the discontinuance of his present business or employment and of his affiliation with any new business or employment involving the advertising, offering for sale, sale, or distribution of any weight-loss product. Each notice of affiliation with any new business or employment shall include respondent's new business address and telephone number, current home address, and a statement describing the nature of the business or employment and his duties and responsibilities.

X

This Order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the Order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this Order that terminates in less than twenty years;

B. This Order's application to any respondent that is not named as a defendant in such complaint; and

C. This Order if such complaint is filed after the Order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this paragraph as though the complaint was never filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

XI

It is further ordered that respondents shall, within sixty (60) days after service of this Order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from proposed respondents Johnson & Collins Research, Inc. and Gregor A. von Ehrenfels, an officer of the corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns advertising for ''Total Body Reshaping System'' and ''Super Total Body Reshaping System'' (collectively referred to herein as ''TBRS''). These products are booklets or pamphlets containing advice on dieting and exercise in order to achieve weight loss and body toning. The advertisements ran in teen-oriented magazines.

The Commission's complaint charges that proposed respondents falsely represented that users of the TBRS are not required to consciously diet to lose weight. The complaint also alleges that proposed respondents lacked a reasonable basis when they made the following claims: (1) TBRS is effective in causing fast and significant weight loss; (2) TBRS is effective in significantly reducing body fat and cellulite; (3) TBRS is effective in causing weight loss, fat reduction, and increased muscle tone in specific, desired areas of the body; and (4) TBRS is effective in burning excess calories, modifying caloric intake, and converting food into energy instead of fat. Finally, the complaint alleges that, in light of their representations, proposed respondents' failure to disclose in advertisements that TBRS consists only of booklets or pamphlets containing advice concerning techniques for reducing caloric intake and/or increasing exercise, and that reducing caloric intake and/or increasing exercise is required to lose weight, was a deceptive practice.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent proposed respondents from engaging in similar acts in the future.

Part I of the proposed order prohibits proposed respondents from representing that TBRS, or any substantially similar product, does not require dieting. Part II requires proposed respondents to possess competent and reliable scientific evidence before making any of the representations alleged to be unsubstantiated in the complaint for any weight-loss product; as well as any representation that any such product has any effect on users' weight, body size or shape, body measurements, or appetite.

Part III of the proposed order provides that nothing in Parts I and II prohibits proposed respondents from making representations which promote the sale of books and other publications, provided that, the advertising only purports to express the opinion of the author or to quote the contents of the publication; the advertising discloses the source of the statements quoted or derived from the contents of the publication; and the advertising discloses the author to be the source of the opinions expressed about the publication. Part III does not apply to any publication or its advertising that is used to promote the sale of some other product as part of a commercial scheme.

Part IV prohibits proposed respondents from representing that TBRS, or any substantially similar product, has any effect on weight or body size, unless they disclose clearly and prominently that the product consists solely of a booklet or pamphlet containing information and advice on weight loss. Part V requires proposed respondents to disclose that diet or exercise are required to lose weight in connection with any representation about the effect of weight-loss product on weight or body size, unless they have competent and reliable scientific evidence to the contrary.

Part VI requires Johnson & Collins Research to distribute a copy of the order to certain current and future company personnel. Part VII requires proposed respondents to maintain, for five years, all materials that support, contradict, qualify, or call into question any representations they make that are covered by the proposed order. Under Part VIII of the proposed order, Johnson & Collins Research is required to notify the Federal Trade Commission at least thirty days prior to any proposed change in its corporate structure that may affect compliance with the order's obligations. Part IX requires that Gregor A. von Ehrenfels, for a period of three years, notify the Commission of his affiliation with any new business or employment involving the advertising, offering for sale, sale, or distribution of any weight-loss product. Part X provides for the termination of the order after twenty years under certain circumstances. Part XI obligates proposed respondents to file compliance reports with the Commission.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 96–7292 Filed 3–25–96; 8:45 am]

BILLING CODE 6750–01–M

[File No. 952–3099]

NW Ayer, Inc.; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit the New York City-based advertising agency from misrepresenting the absolute or comparative amounts of cholesterol, total fat, saturated fat, or any other fatty acid in eggs or in any meat, dairy, or poultry product and from misrepresenting the existence or results of any test or study. The consent agreement settles allegations arising from Ayer's role in creating advertisements that conveyed allegedly deceptive claims regarding the effect of Eggland's Best eggs on blood cholesterol.

DATES: Comments must be received on or before May 28, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:

C. Lee Peeler, Federal Trade Commission, S–4002, 6th and Pennsylvania Ave, NW., Washington, DC, 202–326–3090.

Justin Dingfelder, Federal Trade Commission, S–4302, 6th and Pennsylvania Ave., NW., Washington, DC, 202–326–3088.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period

of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Before Federal Trade Commission

[File No. 952 3099]

In the Matter of *N.W. Ayer & Son, Inc. d/b/a NW Ayer, Inc.* a corporation; Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of N.W. Ayer & Son, Inc. d/b/a NW Ayer, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between N.W. Ayer & Son, Inc. d/b/a NW Ayer, Inc., by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent N.W. Ayer & Son, Inc. d/b/a NW Ayer, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 825 Eighth Avenue, New York, New York 10019.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. The agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding; and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definition

For purposes of this order, the phrase ''covered food product'' shall mean only eggs and any meat, dairy, or poultry product. For purposes of this definition, ''meat product'' shall include any food product for human consumption that is made in whole or in substantial part of the meat of cattle, sheep, swine, or goats; ''dairy product'' shall include any food product for human consumption that is made in whole or in substantial part from milk; and ''poultry product'' shall include any food product for human consumption that is made in whole or in substantial part of the meat of any fowl.

I

It is ordered that respondent N.W. Ayer & Son, Inc. d/b/a NW Ayer, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any covered food product in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, through numerical or descriptive terms or any other means, the absolute or comparative amount of cholesterol, total fat, saturated fat or any other fatty acid in such covered food product. If any representation covered by this Part either directly or by implication conveys any nutrient content claim defined (for purposes of labeling) by any regulation promulgated by the Food and Drug Administration, or, if applicable, the United States Department of Agriculture, compliance with this Part shall be governed by the qualifying amount for such defined claim as set forth in such regulation.

II

It is further ordered that respondent N.W. Ayer & Son, Inc. d/b/a NW Ayer, Inc., its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any covered food product in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, about the absolute or comparative effect of such covered food product on serum cholesterol, whether or not such covered food product is consumed as part of an unrestricted diet or as part of any specific dietary regimen, unless at the time of making the representation, respondent possesses and relies upon competent and reliable scientific

evidence substantiating such representation. For purposes of this order, ''competent and reliable scientific evidence'' shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

III

It is further ordered that respondent N.W. Ayer & Son, Inc. d/b/a/ NW Ayer, Inc., its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any covered food product in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, about the absolute or comparative health benefits of such covered food product, including but not limited to its effect on heart disease, unless at the time of making the representation, respondent possesses and relies upon competent and reliable scientific evidence substantiating such representation.

IV

It is further ordered that respondent N.W. Ayer & Son, Inc. d/b/a/ NW Ayer, Inc., its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any covered food product in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the existence, contents, validity, results, conclusions or interpretations of any test or study.

V

Nothing in this order shall prohibit respondent N.W. Ayer & Son, Inc. d/b/a/ NW Ayer, Inc., from making any representation that is specifically permitted in labeling for any product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990, or by nutrition labeling regulations promulgated by the Department of Agriculture pursuant to the Federal Meat Inspection Act or the Poultry Products Inspection Act.

VI

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this order, respondent N.W. Ayer & Son, Inc. d/b/a NW Ayer, Inc., or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify or call into question such representation, or the basis relied upon for such representation, including complaints from consumers and complaints or inquiries from governmental organizations.

VII

It is further ordered that respondent N.W. Ayer & Son, Inc. d/b/a NW Ayer, Inc., shall, within thirty (30) days after service upon it of this order, distribute a copy of the order to each of its operating divisions, each of its managerial employees, and each of its officers, agents, representatives or employees engaged in the preparation or placement of advertising or other materials covered by this order and shall secure from each such person a signed statement acknowledging receipt of this order.

VIII

It is further ordered that respondent N.W. Ayer & Son, Inc. d/b/a NW Ayer, Inc., shall notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure, including but not limited to dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other corporate change that may affect compliance obligations arising out of this order.

IX

It is further ordered that respondent N.W. Ayer & Son, Inc. d/b/a NW Ayer, Inc., shall, within sixty (60) days after service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

X

This order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however,* that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint if filed after the order has terminated pursuant to this paragraph.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from NW Ayer & Son, Inc. d/b/a/ NW Ayer, Inc. (''Ayer'').

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns advertising claims made by Ayer, an advertising agency, for eggs marketed by Eggland's Best, Inc. Eggland's Best, Inc. is subject to a Commission consent order (Docket No. C–3520), issued on August 15, 1994. A separate consent decree with Eggland's Best regarding alleged violations of that consent order relating to the same advertisements will be filed in United States District Court.

The Commission's complaint in this matter charges Ayer with engaging in unfair or deceptive practices in

connection with the advertising of Eggland's Best eggs. According to the complaint, Ayer represented, without adequate substantiation, that eating Eggland's Best eggs (1) will not increase serum cholesterol, and (2) will not increase serum cholesterol as much as eating ordinary eggs. The complaint also alleges that Ayer falsely represented that (1) clinical studies have proven that adding twelve Eggland's Best eggs per week to a low-fat diet does not increase serum cholesterol, (2) Eggland's Best eggs are low in saturated fat, and (3) Eggland's Best eggs are lower in saturated fat than ordinary eggs.

Finally, the complaint alleges that Ayer knew or should have known that these claims were false and misleading.

The consent order contains provisions designed to remedy the violations charged and to prevent Ayer from engaging in similar deceptive and unfair acts and practices in the future.

Part I of the order prohibits Ayer from misrepresenting the absolute or comparative amount of cholesterol, total fat, saturated fat, or any other fatty acid in eggs, or any meat, dairy, or poultry product (''covered food product''). Part I also requires that any representation covered by that Part that conveys a nutrient content claim defined for labeling by any regulation of the Food and Drug Administration (''FDA'') or United States Department of Agriculture (''USDA'') must comply with the qualifying amount set forth in that regulation.

Part II of the order prohibits Ayer from making any representation about the absolute or comparative effect of any covered food product or serum cholesterol unless it possesses and relies upon competent and reliable scientific evidence substantiating the representation at the time it is made.

Part III of the order prohibits Ayer from making any representation about the absolute or comparative health benefits of the covered food product unless it possesses and relies upon competent and reliable scientific evidence substantiating the representation at the time it is made.

Part IV of the order prohibits Ayer from misrepresenting the existence, contents, validity, results, conclusions or interpretations of any test or study.

Part V of the order provides that representations that would be specifically permitted in food labeling, under certain regulations issued by the FDA or USDA are not prohibited.

Part VI of the order requires Ayer to maintain copies of all materials relied upon in making any representation covered by the order for five years.

Part VII of the order requires Ayer to distribute copies of the order to its operating divisions and to various officers, agents and representatives of Ayer.

Part VIII of the order requires Ayer to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part IX of the order requires Ayer to file with the Commission one or more reports detailing compliance with the order.

Part X of the order is a ''sunset'' provision, stating that the order will terminate twenty years from the date it is issued unless a complaint is filed in federal court, by either the United States or the FTC, alleging any violation of the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify any of their terms.

Donald S. Clark,

Secretary.

[FR Doc. 96–7291 Filed 3–25–96; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHs.

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Requirement abstracted below has been submitted to the Office of Management and budget (OMB) for review and comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency—s functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, with change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Medicare Uniform Institutional Provider Bill; *Form No.:* HCFA–1450; *Use:* Medicare reimbursement of claims. This form is the standardized form used in the Medicare/Medicaid program to apply for reimbursement for covered services by all providers that accept Medicare/Medicaid assigned claims. It will reduce cost and administrative burdens associated with claims since only one coding system is used and maintained. *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:* 123,432,041; *Total Annual Hours Requested:* 1,890,490.

To request copies of the proposed paperwork collections referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: March 14, 1996.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–7222 Filed 3–25–96; 8:45 am]

BILLING CODE 4120–03–P

National Institutes of Health

Proposed Data Collection Available for Public Comment and Recommendations

Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that Federal agencies provide a 60-day notice in the Federal Register concerning each proposed collection of information. The National Institute of Dental Research (NIDR) of the National Institutes of Health is publishing this notice to solicit public comment on a proposed data collection: 1996–1997 National Survey of the Oral Health of U.S. School Children (OHSC III).

Comments are invited on: (a) The need for the information (b) its practical utility, (c) the accuracy of the agency's burden estimate, and (d) ways to minimize burden on respondents. Send comments to Dr. Thomas F. Drury,

Disease Prevention and Health Promotion Branch, DEODP, NIDR, NIH, Natcher Building, Room 3AN–44A, 9000 Rockville Pike, Bethesda, MD 20892. Written comments must be received by May 28, 1996. To request a copy of the data collection plan and instrument, call Dr. Drury on (301) 594–4916 (not a toll-free number).

Proposed Project

1996–1997 National Survey of the Oral Health of U.S. School Children (OHSC III)—New—This project is for the design and implementation of a nationwide oral epidemiologic survey of U.S. schoolchildren, grades K through 12. The survey will provide the database for a historical analysis of trends in dental caries and other oral health characteristics of U.S. schoolchildren. It will provide for the first time statistically reliable estimates of the oral health of Black and Hispanic schoolchildren in the United States. The objectives of this survey are to: (1) Assess the relative frequency and sociodemographic distribution of certain oral diseases and disorders in U.S. schoolchildren, (2) oversample selected minority schoolchildren to provide statistically reliable baseline, national estimates of oral health for Black nonHispanic and Hispanic schoolchildren, and (3) provide the database for the late nineties, needed to evaluate shorter- and longer-term trends in coronal caries and certain other oral diseases and disorders. Burden estimates are as follows:

	No. of respondents	No. of responses per respondent	Avg/burden/response (hours)
Parents	32,410	1.00	.2505
Children	32,410	2.06	.2910
School Principals	586	1.00	.2505
School Administrators	165	1.00	.1002

Dated: March 20, 1996.

Yvonne H. du Buy,

Executive Officer, NIDR.

[FR Doc. 96–7250 Filed 3–25–96; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Cancellation of Meetings

Notice is hereby given of the cancellation of the closed meetings of the National Cancer Institute Special Emphasis Panel (SEP) of the National Cancer Institute scheduled for March 25–27 and 26–28, 1996, which were published in the Federal Register on March 19 (61 FR 11216).

The meetings were cancelled due to administrative complications.

Dated: March 20, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–7251 Filed 3–25–96; 8:45 am]

BILLING CODE 4140–01–M

National Center for Research Resources, Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Center Research Resources Special Emphasis Panel (SEP) meetings:

Name of SEP: General Clinical Research Centers Review Committee.

Date: April 10, 1996.

Time: 7:30 a.m.

Place: Novotel New York Hotel, London Room, 226 West 52nd Street, New York, NY 10019–5804, (212) 315–1313.

Contact Person: Dr. Bela J. Gulyas, Deputy Director, Office of Review, 6705 Rockledge Drive, MSC 7965, Room 6116, Bethesda, MD 20892–7965, (301) 435–0806.

Purpose/Agenda: To evaluate and review grant applications.

This notice is being published less than 15 days prior to the above meeting due to the partial shutdown of the Federal Government and the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: Institutional Development Award.

Date: April 16–17, 1996.

Time: 8:00 a.m.

Place: Holiday Inn Bethesda, New Jersey Room, 8120 Wisconsin Avenue, Bethesda, MD 20814, (301) 652–2000.

Contact Person: Dr. Jill Carrington, Scientific Review Administrator, 6705 Rockledge Drive, MSC 7965, Room 6104, Bethesda, MD 20892–7965, (301) 435–0822.

Purpose/Agenda: To evaluate and review grant applications.

Name of SEP: General Clinical Research Centers Review Committee.

Date: May 8, 1996.

Time: 7:30 a.m.

Place: Sheraton Burlington Hotel, Room One, 870 Williston Road, Burlington, VT 05403, (802) 862–6576.

Contact Person: Dr. Bela J. Gulyas, Deputy Director, Office of Review, 6705 Rockledge Drive, MSC 7965, Room 6116, Bethesda, MD 20892–7965, (301) 435–0806.

Purpose/Agenda: To evaluate and review grant applications.

Name of SEP: General Clinical Research Centers Review Committee.

Date: June 5, 1996.

Time: 7:30 a.m.

Place: Holiday Inn Financial District, Jade Room, 750 Kearny Street, San Francisco, CA 94108, (415) 433–6484.

Contact Person: Dr. Bela J. Gulyas, Deputy Director, Office of Review, 6705 Rockledge Drive, MSC 7965, Room 6116, Bethesda, MD 20892–7965, (301) 435–0806.

Purpose/Agenda: To evaluate and review grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.333 Clinical Research, National Institutes of Health, HHS)

Dated: March 20, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–7252 Filed 3–25–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Notice of Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP), National Institute of Allergy and Infectious Diseases, March 20–21, 1996, Georgetown Holiday Inn, 2101 Wisconsin Avenue, N.W., Washington, D.C., which was published in the Federal Register on February 27, 1996, (61 FR 7269).

The meeting was cancelled due to complications of other commitments of several members of the SEP and will be rescheduled at a later date.

Dated: March 20, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–7253 Filed 3–25–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases, Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Mucosal and Synovial Gene Transfer.

Date: April 11, 1996.

Time: 9:00 a.m.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, N.W., Washington, DC 20007, (202) 338–4600.

Contact Person: Dr. Madelon C. Halula, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C16, Bethesda, MD 20892, (301) 496–2550.

Purpose/Agenda: To evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: March 20, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–7254 Filed 3–25–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health, Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: April 2, 1996.

Time: 1:30 p.m.

Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Sheri L. Schwartzback, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4843.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: March 20, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–7255 Filed 3–25–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health, Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: April 24, 1996.

Time: 11:15 a.m.

Place: Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Phyllis L. Zusman, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: April 29, 1996.

Time: 9 a.m.

Place: Bethesda Ramada Inn, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Phyllis L. Zusman, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: March 20, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–7256 Filed 3–25–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: April 1, 1996.

Time: 11 a.m.

Place: Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rehana A. Chowdhury, Parklawn Building, Room 9C–26, 5600 Fisher Lane, Rockville, MD 20857, Telephone: 301 443–6470.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: March 20, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–7257 Filed 3–25–96; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Microbiological and Immunological Sciences.

Date: April 8, 1996.

Time: 1:00 p.m..

Place: NIH, Rockledge 2, Room 4210, Telephone Conference.

Contact Person: Dr. Bruce A. Maurer, Scientific Review Administrator, 6701 Rockledge Drive, Room 4210, Bethesda, Maryland 20892, (301) 435–1225.

Name of SEP: Biological and Physiological Sciences.

Date: April 11, 1996.

Time: 1:00 p.m..

Place: NIH, Rockledge 2, Room 4152, Telephone Conference.

Contact Person: Dr. Marcelina Powers, Scientific Review Administrator, 6701 Rockledge Drive, Room 4152, Bethesda, Maryland 20892, (301) 435–1720.

Name of SEP: Biological and Physiological Sciences.
Date: April 12, 1996.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4152, Telephone Conference.
Contact Person: Dr. Marcelina Powers, Scientific Review Administrator, 6701 Rockledge Drive, Room 4152, Bethesda, Maryland 20892, (301) 435–1720.

Name of SEP: Biological and Physiological Sciences.
Date: April 12, 1996.
Time: 10:30 a.m.
Place: NIH, Rockledge 2, Room 6172, Telephone Conference.
Contact Person: Dr. Cheryl Corsaro, Scientific Review Administrator, 6701 Rockledge Drive, Room 6172, Bethesda, Maryland 20892, (301) 435–1045.

This notice is being published less than 15 days prior to the above meetings due to the partial shutdown of the Federal Government and the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: Microbiological and Immunological Sciences.
Date: April 15, 1996.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4178, Telephone Conference.
Contact Person: Dr. Jean Hickman, Scientific Review Administrator, 6701 Rockledge Drive, Room 4178, Bethesda, Maryland 20892, (301) 435–1146.

Purpose/Agenda: To review Small Business Innovation Research.

Name of SEP: Biological and Physiological Sciences.
Date: April 15–16, 1996.
Time: 9:00 a.m.
Place: One Washington Circle Hotel, Washington, DC.
Contact Person: Dr. Anita Sostek, Scientific Review Administrator, 6701 Rockledge Drive, Room 5202, Bethesda, Maryland 20892, (301) 435–1260.

Name of SEP: Behavioral and Neurosciences.
Date: April 18, 1996.
Time: 8:30 a.m.
Place: Bethesda Marriott Pooks Hill, Bethesda, MD.
Contact Person: Dr. Leonard Jakubczak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5172, Bethesda, Maryland 20892, (301) 435–1247.

Name of SEP: Biological and Physiological Sciences.
Date: April 26, 1996.
Time: 8:00 a.m.
Place: Double Tree Hotel, Rockville, MD.
Contact Person: Dr. Abubakar A. Shaikh, Scientific Review Administrator, 6701 Rockledge Drive, Room 6166, Bethesda, Maryland 20892, (301) 435–1042.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of person privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93,893, National Institutes of Health, HHS)

Date: March 20, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–7258 Filed 3–25–96; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Chemistry and Related Sciences.
Date: April 9, 1996.
Time: 1:00 p.m.
Place: NIH, Rockledge, 2 Room 4176, Telephone Conference.
Contact Person: Dr. Mike Radtke, Scientific Review Administrator, 6701 Rockledge Drive, Room 4176, Bethesda, Maryland 20892, (301) 435–1728.

Name of SEP: Clinical Sciences.
Date: April 11, 1996.
Time: 3:00 p.m.
Place: NIH, Rockledge 2, Room 4136, Telephone Conference.
Contact Person: Dr. Gordon Johnson, Scientific Review Administrator, 6701 Rockledge Drive, Room 4136, Bethesda, Maryland 20892, (301) 435–1212.

Name of SEP: Clinical Sciences.
Date: April 12, 1996.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4136, Telephone Conference.
Contact Person: Dr. Gordon Johnson, Scientific Review Administrator, 6701 Rockledge Drive, Room 4136, Bethesda, Maryland 20892, (301) 435–1212.

This notice is being published less than 15 days prior to the above meetings due to the partial shutdown of the Federal Government and the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: Behavioral and Neurosciences.
Date: April 22, 1996.
Time: 3:00 p.m.
Place: NIH, Rockledge 2, Room 5176, Telephone Conference.
Contact Person: Dr. Carole Jelsema, Scientific Review Administrator, 6701 Rockledge Drive, Room 5176, Bethesda, Maryland 20892, (301) 435–1248.

Name of SEP: Clinical Sciences.
Date: May 2, 1996.
Time: 3:00 p.m.
Place: NIH, Rockledge 2, Room 4136, Telephone Conference.
Contact Person: Dr. Gordon Johnson, Scientific Review Administrator, 6701 Rockledge Drive, Room 4136, Bethesda, Maryland 20892, (301) 435–1212.

The meetings will be closed in accordance with the provisions set forth in secs. 552(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health HHS)

Dated: March 20, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–7271 Filed 3–25–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–960–1060–02–24 1A]

Extension of Approved Information Collection, OMB Number 1004–0042

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 existing approval to collect certain information from those requesting to adopt a wild horse or burro. BLM needs this information to determine whether individuals are qualified to provide humane care and proper treatment (including proper transportation, feeding and handling) to an adopted wild horse or burro.

DATES: Comments on the proposed information collection must be received by May 28, 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, DC 20240.

Comments may be sent via Internet to: !WO140@attmail.com. Please include ''ATTN: 1004–0042'' 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: Robert Mitchell, (702) 785–6583.

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.*

Section 3 (b) (2) (B) of Public Law 92–195, as amended (commonly referred to as the Wild Free-Roaming Horse and Burro Act), requires that BLM provide healthy excess animals for adoption by individuals the Secretary determines are qualified to provide humane care and proper treatment (including proper transportation, feeding and hauling). The implementing regulations are found in 43 CFR Subpart 4750—Private Maintenance. The regulations were issued on March 3, 1968 (51 FR 7414) and last amended on September 25, 1990 (55 FR 39152). Under the voluntary program, individuals must inform the BLM of their interest and willingness to adopt. The adoption application requirement provides individuals a mechanism to inform BLM of their interest and to submit their credentials for determination of their qualifications.

The Application for Adoption of Wild Horse(s) or Burro(s), Form 4710–10, is required by the Wild Horse and Burro Regulations, 43 CFR 4750.3, and is used to determine an individual's qualifications for providing care and humane treatment of wild horses or burros. The Application for Adoption of Wild Horse(s) and Burros(s) form requires that the applicant furnish the following information: (1) The applicants name, address, and telephone number, (2) the applicant's driver's license number, (3) applicant's birth date, (4) an indication of the number and species of animals the applicant wishes to adopt, (5) map to where the adopted wild horse or burro will be located, (6) questions the applicant whether he understands the restrictions related to adopting an animal, (7) information requested about the physical characteristics of the site where the animals will be kept, (8) information about whether more than four untitled animals will be cared for at this location, (9) information about whether someone else will select, transport, or care for the animals, and, (10) whether the applicant has ever been convicted of abuse or inhumane treatment of animals, violation of the Wild Free-Roaming Horse and Burro Act or the Wild Horse and Burro Regulations.

BLM uses the information provided by the applicant to determine whether individuals are qualified to provide humane care and proper treatment (including proper transportation, feeding and handling) to an adopted wild horse or burro. Upon approval of the application by a BLM Authorized Officer and completion of a Private Maintenance and Care Agreement, the individual may adopt a wild horse or burro. The information, which is required by law, is a voluntary, nonrecurring submission necessary to receive a benefit. There is no other source for the required information, and failure of the applicant to furnish the required information will result in the applicant not being allowed to adopt a wild horse or burro.

The collection of information is short, simple and not inconvenient to the applicant. Valuable dialogue normally occurs during the approval process when the BLM conducts an interview with the applicant to ensure that the applicant understands the obligations and prohibited acts and that the adopter is knowledgeable about horse or burros or has access to assistance from a knowledgeable individual. Based on BLM's experience administering the activities described above, the public reporting burden for the information collected is estimated to average ten minutes per response. The respondents must be: (1) At least 18 years of age, (2) a resident of the United States or its territories and maintain the animal in the United States or its territories, (3) have no convictions for violations of 43 CFR 4700 regulations, and (4) have no convictions for inhumane treatment of animals. The frequency of response is once for an individual to adopt a wild horse or burro. The number of responses per year is estimated to be about 30,000. The estimated total annual burden on new respondents is about 5,000 hours.

Any interested member of the public may request and obtain, without charge, a copy of Form 4710–10 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 also become a matter of public record.

Dated: March 20, 1996.

Annetta L. Cheek,

Chief, Regulatory Management Team.

[FR Doc. 96–7207 Filed 3–25–96; 8:45 am]

BILLING CODE 4310–84–P

[WO–330–1030–02–24 1A]

Extension of Approved Information Collection, OMB Number 1004–0058

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 existing approval to collect certain information from Federal timber purchasers to allow the BLM to determine compliance with export restrictions. Federal timber purchasers must keep records of Federal timber volume purchased and private timber volume exported for a period of three years from the date the activity occurred. BLM uses this information to administer export restrictions on BLM timber sales and to determine whether substitution of Federal timber for exported private timber has occurred.

DATES: Comments on the proposed information collection must be received by May 28, 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: 1004–0058'' 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: Dwight Fielder, (202) 452–7758.

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 manages and sells timber located on the revested Oregon and California Railroad and the reconveyed Coos Bay Wagon Road Grant Lands pursuant to authority of the Act of August 28, 1937 (50 Stat. 875, 43 U.S.C. 1181e). BLM manages and sells timber located on other lands under the jurisdiction of the BLM pursuant to the Act of July 31, 1947, as amended (61 Stat. 681, 30 U.S.C. 601 *et seq.*). The Department of the Interior and Related Agencies Appropriation Acts of 1975 and 1976 contained a requirement for the inclusion of provisions in timber sale contracts that will assure that un-processed timber sold from public lands under the jurisdiction of the BLM will not be exported or used by the purchasers as a substitute for timber they export or sell for export. The implementing regulations are found at 43 CFR 5400, Sales of Forest Products; General. The regulations were issued on June 13, 1970 (35 FR 9785). The regulations were amended on March 26, 1976 (41 FR 12658) to reflect the prohibition against export and substitution, and last amended on March 11, 1991 (56 FR 10175). Timber purchasers or their affiliates must provide the information listed at 43 CFR 5424.1(a). BLM collects the purchaser's name, timber contract number, processing facility location, total volume of Federal timber purchased on an annual basis, total volume of private timber exported on an annual basis, and method of measuring the volume using BLM Form 5460–17, Substitution Determination. The regulations at 43 CFR 5424.1(b) requires that purchasers or affiliates retain a record of Federal timber acquisitions and private timber exports for three years from the date the activity occurred.

BLM uses the information to determine if there was a substitution of Federal timber for exported private timber in violation of 43 CFR 5400.(3)(c). If BLM did not collect this information, it could not protect against export and substitution.

Based on BLM's experience administering timber contracts, the public reporting burden for the information collected is estimated to average one hour per response. The respondents are Federal timber purchasers who have exported private timber within one year preceding the purchase date of Federal timber and/or affiliates of a timber purchaser who exported private timber within one year before the acquisition of Federal timber from the purchaser. The frequency of response for substitution determination is annually. The number of responses per year is estimated to be about 100. The estimated total annual burden on new respondents is about 100 hours.

Any interested member of the public may request and obtain, without charge, a copy of Form 5460–17 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 also become a matter of public record.

Dated: March 20, 1996.

Dr. Annetta L. Cheek,

Chief, Regulatory Management Team.

[FR Doc. 96–7208 Filed 3–25–96; 8:45 am]

BILLING CODE 4310–84–P

[WO–330–1030–02–24 1A]

Extension of Approved Information Collection, OMB Number 1004–0113

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 existing approval to collect certain information from prospective Federal timber purchasers to allow the BLM to determine the qualification of the purchaser to bid on a timber sale contract and to document written and sealed bids and bid deposits. BLM uses this information to administer the timber sale contracting process by ensuring only qualified bidders are participating and that the bidding process is not compromised.

DATES: Comments on the proposed information collection must be received by May 28, 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: 1004–0113'' 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: Dwight Fielder, (202) 452–7758.

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 manages and sells timber located on the revested Oregon and California Railroad and the reconveyed Coos Bay Wagon Road Grant Lands pursuant to authority of the Act of August 28, 1937, (50 Stat. 875, 43 U.S.C. 1181e). BLM manages and sells timber located on other lands under the jurisdiction of the BLM pursuant to the Act of July 31, 1947, as amended (61 Stat. 681, 30 U.S.C. 601 *et seq.*). The implementing regulations are found at 43 CFR 5400, Sales of Forest Products; General. The regulations were issued on June 13, 1970 (35 FR 9785), amended on March 8, 1973 (38 FR 6280), September 2, 1982 (47 FR 38696), and last amended on July 17, 1987 (52 FR 26983). A bidder or purchaser for the sale of timber must be (1) an individual who is a citizen of the United States, (2) a partnership composed wholly of such citizens, (3) an unincorporated association composed wholly of such citizens, or (4) a corporation authorized to transact business in the States in which the timber is located (43 CFR 5441.1). BLM collects the purchaser's name and address, tract number, sale name, sale notice date, BLM District, evidence of qualification, bid deposit type and amount, product type or timber species, unit, estimated volume or quantity, unit price and total value using BLM Form 5440–9, Deposit and Bid for Timber.

BLM uses the information to determine that a prospective purchaser has met the regulatory requirements to qualify for bidding and that the bid offered meets the minimum acceptable amount. If BLM did not collect this information, unqualified prospective purchasers might enter into the timber sale contracting process and the bidding process may be compromised.

Based on BLM's experience administering timber sales, the public reporting burden for the information collected is estimated to average one and one quarter hours per response. This includes time to read and understand the instructions, consult the timber sale prospectus, make a determination of the value of the products and fill out the form. The respondents are prospective timber purchasers. The frequency of response is controlled by the number of advertised sales conducted. The number of responses is estimated to be 500 from experience with the number of bidders qualifying for timber sales over the past 3 years. The estimated total annual burden on respondents is about 625 hours.

Any interested member of the public may request and obtain, without charge, a copy of Form 5440–9 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 also become a matter of public record.

Dated: March 20, 1996.

Dr. Annetta L. Cheek,

Chief, Regulatory Management Team.

[FR Doc. 96–7209 Filed 3–25–96; 8:45 am]

BILLING CODE 4310–84–P

[OR–130–1020–00; GP6–102]

Notice of Meeting of Eastern Washington Resource Advisory Council

AGENCY: Bureau of Land Management, Spokane District.

ACTION: Meeting of Eastern Washington Resource Advisory Council; Spokane, Washington; April 26, 1996.

SUMMARY: A meeting of the Eastern Washington Resource Advisory Council will be held on April 26, 1996, beginning at 8:00 a.m. at the Quality Inn Valley Suites Hotel, E. 8923 Mission Avenue, Spokane, Washington, 99212. At an appropriate time, the Council meeting will recess for approximately one hour for lunch. The meeting will adjourn upon conclusion of business. Public comments will be received from 10:00 a.m. to 10:30 a.m. The topic to be discussed is Standards and Guidelines for livestock grazing.

FOR FURTHER INFORMATION CONTACT: Richard Hubbard, Bureau of Land Management, Spokane District Office, 1103 N. Fancher, Spokane, Washington, 99212; or call 509–536–1200.

Dated: March 21, 1996.

Joseph K. Buesing,

District Manager.

[FR Doc. 96–7372 Filed 3–25–96; 8:45 am]

BILLING CODE 4310–33–P

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 16, 1996. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by April 10, 1996.

March 21, 1996.

Carol D. Shull,

Keeper of the National Register.

CALIFORNIA

Los Angeles County

Palos Verdes Public Library and Art Gallery—Farnham Martin's Park (Boundary Increase), 2400 Via Campesina, Palos Verdes, 96000393

San Pedro Municipal Ferry Building, Berth 84, foot of 6th St., San Pedro, 96000392

FLORIDA

Okaloosa County

World War II JB—2 Launch Site, Address Restricted, Fort Walton Beach vicinity, 96000395

World War II JB—2 Mobile Launch Site, Address Restricted, Fort Walton Beach vicinity, 96000394

GEORGIA

Burke County

Haven Memorial Methodist Episcopal Church, Barron St., S of Jct. of Barron and 6th Sts., Waynesboro, 96000397

HAWAII

Kauai County

Yamase Building, 4493 Moana Rd., Waimea, 96000398

ILLINOIS

Peoria County

Grand View Drive, Roughly bounded by N. Prospect Rd., the Illinois River bluffs, Adams St., and the Grand View Dr. W. right of way, Peoria, 96000399

IOWA

Guthrie County

Masonic Temple Building, 1311 N. 2nd St., Stuart, 96000400

MARYLAND

Harford County

Vineyard, The (Boundary Decrease),
1201 Conowingo Rd.,
Bel Air vicinity, 96000402

Somerset County

St. Paul's Methodist Episcopal Church,
Jct. of MD 413 and Sign Rd.,
Westover, 96000403

MISSOURI

Pike County

Louisiana Public Library,
121 N. 3rd St.,
Louisiana, 96000401

NEW JERSEY

Sussex County

High Point Park Historic District,
Roughly bounded by the NJ—NY state line and Deckertown Tnpk. between NJ 23 and NJ 653, Wantage and Montague Townships,
Branchville vicinity, 96000404

SOUTH CAROLINA

Beaufort County

Knights of Wise Men Lodge
(St. Helena Island MPS)
Martin Luther King Dr., S of Jct. of Martin Luther King Dr. and US 21,
St. Helena Island, 96000408

Georgetown County

Friendfield Plantation
(Georgetown County Rice Culture MPS)
Roughly bounded by US 521/17A, the Sampit River, Whites Cr., and Creek Rd.,
Georgetown vicinity, 96000409

Lee County

St. Philip's Episcopal Church, Bradford Springs,
Bradford Springs Rd., approximately 6 mi. N of Dalzell,
Dalzell vicinity, 96000406

Spartanburg County

Palmetto Theater,
172 E. Main St.,
Spartanburg, 96000405

Sumter County

O'Donnell House,
120 E. Liberty St.,
Sumter, 96000407

TENNESSEE

Shelby County

Vollintine Evergreen Historic District,
Roughly bounded by Watkins St., Vollintine Ave., Faxon Ave., Jackson Ave., and University St.,
Memphis, 96000410

Trousdale County

Averitt—Herod House,
395 Herod Ln.,
Hartsville vicinity, 96000411

UTAH

Salt Lake County

Carlson Hall
(Public Works Buildings MPS)
369 S. University St.,
Salt Lake City, 96000414

Summit County

Union Pacific Park City Branch Railroad Grade,
RR grade parallel to I–80 from Echo to Park City,
Echo vicinity, 96000413

WASHINGTON

Kitsap County

Fort Ward Historic District (Boundary Increase),
Fort Ward, approximately .5 mi. N of Beans Pt.,
Bainbridge Island, 96000415

Whatcom County

Skagit River and Newhalem Creek Hydroelectric Projects
(Hydroelectric Power Plants MPS)
At Newhalem on the Skagit River and at Ross Dam,
Newhalem vicinity, 96000416

WISCONSIN

Green County

Cadiz Township Joint District No. 2 School,
214 School St.,
Browntown, 96000419

Milwaukee County

Friedmann Row,
1537, 1539, 1541, 1543 N. Cass St. and 731 E. Pleasant St.,
Milwaukee, 96000420

South Layton Boulevard Historic District,
921—2264 S. Layton Blvd.,
Milwaukee, 96000412

Ozaukee County

Nieman, Edwin J., Sr., House,
13030 N. Cedarburg Rd.,
Mequon, 96000418

Washington County

Washington County ''Island'' Effigy Mound District,
Address Restricted,
West Bend vicinity, 96000417

[FR Doc. 96–7282 Filed 3–25–96; 8:45 am]

BILLING CODE 4310–70–P

Bureau of Reclamation

[FES 96-14]

Tongue River Basin Project/Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992, Big Horn County, Montana

AGENCY: Bureau of Reclamation (Interior), in conjunction with the Northern Cheyenne Tribe and the Montana Department of Natural Resources and Conservation.

ACTION: Notice of availability of Final Environmental Impact Statement (FEIS).

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Bureau of Reclamation, acting as lead Federal agency, in conjunction with the Northern Cheyenne Tribe and the Montana Department of Natural Resources and Conservation, has prepared a Final Environmental Impact Statement on the Tongue River Basin Project portion of the Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992 (Settlement Act). The proposed action affects the following trust assets of the Northern Cheyenne Indian Tribe (Tribe) (1) the Tribe's existing water supplies held in Tongue River Reservoir; (2) the safety of downstream Tribal lands; and (3) additional water for the Tribe's use in the Tongue River Basin. The FEIS evaluates the impact to the environment of various alternatives for protecting these Tribal assets. The project includes the repair and enlargement of the Tongue River Dam, the partial fulfillment of the Northern Cheyenne Settlement Act, and the conservation, development, and enhancement of fish and wildlife resources and habitat in the Tongue River Basin.

FOR FURTHER INFORMATION CONTACT: Ms. Katherine Jabs, Area Manager, Montana Projects Office, Bureau of Reclamation (Code: MT–100), P.O. Box 30137, Billings, Montana 59107, telephone: (406) 247–7298.

SUPPLEMENTARY INFORMATION: Negotiations between the Federal Government (acting as trustee for the Tribe) and the State of Montana culminated in 1991 with the signing of a water rights compact. Subsequently, the compact was ratified by the United States Congress and the Northern Cheyenne Indian Water Rights Settlement Act of 1992 (Settlement Act) was signed into Public Law #102–374. During the negotiations, an opportunity was identified to rehabilitate the presently unsafe State-owned Tongue River Dam (Dam) and provide additional water to the Tribe by raising the dam. The following action alternatives for rehabilitating and replacing the spillway and raising the Dam crest elevation 4 feet were evaluated in the FEIS: (1) A Labyrinth Weir Spillway, (2) a Roller-Compacted Concrete (RCC) Spillway, and (3) No Action. Other alternatives were considered and dismissed on the basis of being technically or economically infeasible or resulted in greater environmental effects. These dismissed alternatives ranged from purchasing water rights to satisfy the Settlement Act to constructing a new dam at another location. The preferred alternative

selected by the project sponsors is the RCC alternative.

During the process of negotiating the compact, the State of Montana and the Bureau of Reclamation hosted numerous public and agency informational meetings. More recently, during the NEPA process, public scoping meetings were held during March 1993. A scoping document containing the schedule for all meetings was mailed to approximately 2100 individuals and entities on the Northern Cheyenne Indian Reservation and surrounding towns and cities. After the scoping process was completed, the draft EIS was completed and sent out for agency and public review and comment in mid 1995. Comments were received and replies are incorporated in the FEIS.

There is a 30-day public comment period for the FEIS. Anyone interested in obtaining a copy of the FEIS and/or wanting more information relative to the study should contact the following persons:

Ms. Brenda Schilf, Project Coordinator, Bureau of Reclamation, Montana Projects Office, P.O. Box 30137, Billings, MT 59107, (406) 247–7298.

Mr. Ernie Robinson, Project Coordinator, Northern Cheyenne Tribe, 128 Little Coyote Drive, Lame Deer, MT 59043, (406) 477–6503.

Mr. Stan Jones, Project Coordinator, Department of Natural Resources and Conservation, 48 N. Last Chance Gulch, P.O. Box 201601, Helena, Montana 59620–1601, (406) 444–0525.

Dated: March 14, 1996.

Katherine Jabs,

Acting Regional Director.

[FR Doc. 96–7197 Filed 3–25–96; 8:45 am]

BILLING CODE 4310–09–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Proposed Collection; Comment Request

SUMMARY: Agency for International Development (AID) is making efforts to reduce the paperwork burden. AID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections of information is necessary for the proper performance of the functions of the agency, including whether information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Send comments on these information collections on or before May 28, 1996.

ADDRESS INFORMATION TO: Mary Ann Ball, Bureau for Management, Office of Administrative Services, Information Support Services Division, Agency for International Development, B930 N.S., Washington, DC, (202) 736–4743 or via e-mail MABall@USAID.Gov.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–0004.

Form Number: AID 11.

Type of Review: Extension of Information Collection.

Title: Application for Approval of Commodity Eligibility.

Purpose: AID provides loans and grants to some developing countries in the form of Commodity Import Programs (CIPS). These funds are made available to host countries to be allocated to the public and private sectors for purchasing various commodities from the U.S., or in some cases, from other developing countries. In accordance with section 604(f) of the Foreign Assistance Act of 1991, as amended, AID may finance only those commodities which are determined eligible and suitable in accordance with various statutory requirements and Agency policies. Using the Application for Approval of Commodity Eligibility (Form 11), the suppliers certify to AID information about the commodities being supplied, as required in section 604(f), so that AID may determine eligibility.

Annual Reporting Burden: Respondents: 395.

Annual burden hours: 404

Dated: March 18, 1996.

Genease E. Pettigrew,

Chief, Information Support Services Division, Office of Administrative Services, Bureau of Management.

[FR Doc. 96–7189 Filed 3–25–96; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–746 (Preliminary)]

Beryllium Metal and High-Beryllium Alloys From Kazakhstan

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping Investigation No. 731–TA–746 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Kazakhstan of beryllium metal and high-beryllium alloys [1] that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by April 29, 1996. The Commission's views are due at the Department of Commerce within five business days thereafter, or by May 6, 1996.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: March 14, 1996.

FOR FURTHER INFORMATION CONTACT: Bonnie Noreen (202–205–3167), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the

[1] The imported products covered by this investigation consist of beryllium metal and high-beryllium alloys with a beryllium content equal to or greater than 30 percent by volume, all the foregoing whether in ingot, billet, powder or block form. Beryllium metal and alloys in which beryllium predominates by weight are provided for in subheading 8112.11.60 of the Harmonized Tariff Schedule of the United States (HTS). Other alloys containing beryllium are provided for elsewhere in the HTS—e.g., aluminum-beryllium alloys are provided for in HTS 7601.20.90.

Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION: *Background.*—This investigation is being instituted in response to a petition filed on March 14, 1996, by Brush Wellman Inc., Cleveland, OH.

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the Federal Register. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on April 3, 1996, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Bonnie Noreen (202–205–3167) not later than April 1, 1996, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before April 9, 1996, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: March 20, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–7214 Filed 3–25–96; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 332–360]

International Harmonization of Customs Rules of Origin

AGENCY: United States International Trade Commission.

ACTION: Request for public comment on draft proposals for chapters 71–81.

EFFECTIVE DATE: March 18, 1996.

FOR FURTHER INFORMATION CONTACT: Eugene A. Rosengarden, Director, Office of Tariff Affairs and Trade Agreements (O/TA&TA) (202–205–2595), or Lawrence A. DiRicco (202–205–2606).

Parties having an interest in particular products or HTS chapters and desiring to be included on a mailing list to receive available documents pertaining thereto should advise Diane Whitfield by phone (202–205–2610) or by mail at the Commission, 500 E St SW., Room 404, Washington, DC 20436. Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. The media should contact Margaret O'Laughlin, Director, Office of Public Affairs (202–205–1819).

BACKGROUND: Following receipt of a letter from the United States Trade Representative (USTR) on January 25, 1995, the Commission instituted Investigation No. 332–360, International Harmonization of Customs Rules of Origin, under section 332(g) of the Tariff Act of 1930 (60 FR 19605, April 19, 1995).

The investigation is intended to provide the basis for Commission participation in work pertaining to the Uruguay Round Agreement on Rules of Origin (ARO), under the General Agreement on Tariffs and Trade (GATT) 1994 and adopted along with the Agreement Establishing the World Trade Organization (WTO).

The ARO is designed to harmonize and clarify nonpreferential rules of origin for goods in trade on the basis of the substantial transformation test; achieve discipline in the rules' administration; and provide a framework for notification, review, consultation, and dispute settlement. These harmonized rules are intended to make country-of-origin determinations impartial, predictable, transparent, consistent, and neutral, and to avoid restrictive or distortive effects on international trade. The ARO provides that technical work to those ends will be undertaken by the Customs Cooperation Council (CCC) (now informally known as the World Customs Organization or WCO), which must report on specified matters relating to such rules for further action by parties to the ARO. Eventually, the WTO Ministerial Conference is to ''establish the results of the harmonization work program in an annex as an integral part'' of the ARO.

In order to carry out the work, the ARO calls for the establishment of a Committee on Rules of Origin of the WTO and a Technical Committee on Rules of Origin (TCRO) of the CCC. These Committees bear the primary responsibility for developing rules that achieve the objectives of the ARO.

A major component of the work program is the harmonization of origin rules for the purpose of providing more certainty in the conduct of world trade. To this end, the agreement contemplates a 3-year CCC program, to be initiated as soon as possible after the entry into force of the Agreement Establishing the WTO. Under the ARO, the TCRO is to undertake (1) to develop harmonized definitions of goods considered wholly obtained in one country, and of minimal processes or operations deemed not to confer origin, (2) to consider the use of change in Harmonized System classification as a means of reflecting substantial transformation, and (3) for those products or sectors where a change of tariff classification does not allow for the reflection of substantial transformation, to develop

supplementary or exclusive origin criteria based on value, manufacturing or processing operations or on other standards.

To assist in the Commission's participation in work under the Agreement on Rules of Origin (ARO), the Commission is making available for public comment draft proposed rules for goods of:

Chapter 71—Natural or Cultured Pearls, Precious or Semi-precious Stones, Precious Metals, Metals Clad with Precious Metal and Articles Thereof; Imitation Jewelry; Coin
Chapter 72—Iron and Steel
Chapter 73—Articles of Iron or Steel
Chapter 74—Copper and Articles Thereof
Chapter 75—Nickel and Articles Thereof
Chapter 76—Aluminum and Articles Thereof
Chapter 78—Lead and Articles Thereof
Chapter 79—Zinc and Articles Thereof
Chapter 80—Tin and Articles Thereof
Chapter 81—Other Base Metals; Cermets; Articles Thereof

of the Harmonized System that are not considered to be wholly made in a single country. The rules rely largely on the change of heading as a basis for ascribing origin.

Copies of the proposed revised rules will be available from the Office of the Secretary at the Commission, from the Commission's Internet web server (http://www.usitc.gov), or by submitting a request on the Office of Tariff Affairs and Trade Agreements voice messaging system, 202–205–2592 or by FAX at 202–205–2616.

These proposals, which have been reviewed by interested government agencies, are intended to serve as the basis for the U.S. proposal to the Technical Committee on Rules of Origin (TCRO) of the Customs Cooperation Council (CCC) (now known as the World Customs Organization or WCO). The proposals do not necessarily reflect or restate existing Customs treatment with respect to country of origin applications for all current non-preferential purposes. Based upon a decision of the Trade Policy Staff Committee, the proposals are intended for future harmonization for the nonpreferential purposes indicated in the ARO for application on a global basis. They seek to take into account not only U.S. Customs current positions on substantial transformation but additionally seek to consider the views of the business community and practices of our major trading partners as well. As such they represent an attempt at reaching a basis for agreement among the contracting parties. The proposals may undergo change as proposals from other government administrations and the private sector are received and considered. Under the circumstances, the proposals should not be cited as authority for the application of current domestic law.

If eventually adopted by the TCRO for submission to the Committee on Rules of Origin of the World Trade Organization, these proposals would comprise an important element of the ARO work program to develop harmonized, non-preferential country of origin rules, as discussed in the Commission's earlier notice. Thus, in view of the importance of these rules, the Commission seeks to ascertain the views of interested parties concerning the extent to which the proposed rules reflect the standard of substantial transformation provided in the Agreement. In addition, comments are also invited on the format of the proposed rules and whether it is preferable to another presentation, such as the format for the presentation of the NAFTA origin or marking rules.

Forthcoming Commission notices will advise the public on the progress of the TCRO's work and will contain any harmonized definitions or rules that have been provisionally or finally adopted.

WRITTEN SUBMISSIONS: Interested persons are invited to submit written statements (original and 14 copies) concerning this phase of the Commission's investigation. Written statements should be submitted to the Office of the Secretary, and follow-up statements are permitted; but all statements must be received at the Commission by the close of business on May 3, 1996, in order to be considered. Information supplied to the Customs Service in statements filed pursuant to notices of that agency has been given to us and need not be separately provided to the Commission. Again, the Commission notes that it is particularly interested in receiving input from the private sector on the effects of the various proposed rules and definitions on U.S. exports. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. All submissions should be addressed to the Office of the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436.

Issued: March 18, 1996.

By order of the Commission.

Donna Koehnke,

Secretary.

[FR Doc. 96–7213 Filed 3–25–96; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Department of Justice Federal Coal Lease Review Information.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the Federal Register and allowed 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comments from the date listed at the top of this page in the Federal Register. This process is conducted in accordance with 5 code of Federal Regulation, Part 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC, 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC, 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534.

Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component,

including whether the information will have practical utility;

(2) evaluate the accuracy of the agencies/components 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.

The proposed collection is listed below:

(1) *Type of information collection.* Extension of a currently approved collection.

(2) *The title of the form/collection.* Department of Justice Federal Coal Lease Review Information.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection.* Forms: ATR–139, ATR–140. Antitrust Division, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract.* Primary: Business or other for-profit. Other: None.

The Department of Justice evaluates the competitive impact of issuances, transfers and exchanges of Federal coal leases. These forms seek information regarding a prospective coal lessee's coal reserves and the reserves subject to the federal lease. The Department uses this information to determine whether the lease transfer is consistent with the Antitrust laws.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond.* 20 responses per year at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection.* 40 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: March 20, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–7193 Filed 3–25–96; 8:45 am]

BILLING CODE 4410–11–M

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Registration for Classification as Refugee.

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 Kathleen Thompson, 202–633–3577, Immigration and Naturalization Service, 425 I Street NW, Washington DC, 20536.

Written comments and/or suggestions regarding this collection may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington DC 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534.

Overview of this information collection:

(1) Type of Information Collection: *Extension of a currently approved collection.*

(2) Title of the Form/Collection: Registration for Classification as Refugee.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form: I–590. 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: Individual and for-profit. Other: None. This form provides a uniform method for applicants to apply for refugee status and contains the information needed in order to adjudicate such applications.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 140,000 responses at 35 minutes per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 81,620 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 20, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–7195 Filed 3–25–95; 8:45 am]

BILLING CODE 4410–10–M

Office of Justice Programs

Bureau of Justice Statistics; Agency Information Collection Activities, Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Pretest of a survey on ''Police Public Contact.''

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the Federal Register and allowed 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comments from the date listed at the top of this page in the Federal Register. This process is conducted in accordance with 5 Code of Federal Regulation, Part 1320.10. Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden

and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534.

Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) evaluate the accuracy of the agencies/components 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 techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The proposed collection is listed below:

(1) Type of information collection. Revision of a currently approved collection.

(2) The title of the form/collection. Pretest of a survey on ''Police Public Contact,''

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection. Form: PPCS–1. Office of Justice Statistics, Office of Justice Programs, 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. This pretest will assist the Bureau of Justice Statistics in determining whether the National Crime Victimization Survey is an appropriate vehicle for implementing the annual data collection/reporting requirement set forth in Section 210402 of the Violent Crime Control and Law Enforcement Act. This statute requires the Attorney General to produce annual statistics on the use of excessive force by police nationwide.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond. 12,000 respondents: of the 12,000 respondents about 11,400 will only answer the lead-in or screening questions which takes one (1) minute per respondent. Additionally, 600 respondents will be asked the detailed questions which takes ten (10) minutes per respondent.

(6) An estimate of the total public burden (in hours) associated with the collection. 290 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: March 20, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–7194 Filed 3–25–96; 8:45 am]

BILLING CODE 4410–18–M

Bureau of Justice Statistics

[OJP No. 1073]

RIN 1121–ZA29

Solicitation for Award of Cooperative Agreement To Continue the Bureau of Justice Statistics Criminal Justice Information Policy Program

AGENCY: Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

ACTION: Solicitation for Award of Cooperative Agreement.

SUMMARY: The purpose of this notice is to announce a public solicitation for the continuation of the Bureau of Justice Statistics (BJS) Criminal Justice Information Policy program. The program, which has been in existence since 1978, serves as the primary liaison between BJS, the States, and other Federal agencies, on issues relating to the quality, content, management, use and exchange of criminal history record information (CHRI). Projects supported under the program include, but are not limited to, major national conferences on criminal justice data quality issues, comprehensive national surveys of State criminal history data quality, numerous workshops on emerging issues such as the uses of Automated Fingerprint Identification Systems (AFIS) and forensic uses of DNA, National Task Forces composed of members representing all components of the Federal and State criminal justice systems, ongoing review of State legislative developments and preparation of a biannual Compendium of State legislation, and extensive preparation of materials and training in areas such as data quality auditing.

A key element in all of these efforts is the extent to which the program provides for direct input by States, for coordination among the States on program activities, and for liaison between the project and other relevant agencies of the Federal Government such as the Federal Bureau of Investigation (FBI), the Immigration and Naturalization Service (INS). The presently proposed project, which is designed to continue these activities, will be funded under a cooperative agreement.

DATES: Proposals must be postmarked on or before April 25, 1996.

ADDRESSES: Proposal should be mailed to: Applications Coordinator, Bureau of Justice Statistics, Room 1144 D, 633 Indiana Avenue, NW 20531.

FOR FURTHER INFORMATION CONTACT: Carol G. Kaplan, Chief, Criminal History Improvement Programs, Bureau of Justice Statistics, 633 Indiana Avenue NW, Washington, D.C. 20531, (202) 307–0759.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Justice Statistics Justice Information Policy Assistance (JIPA) program represents the primary response of BJS to its legislative charter to ''Identify, analyze and participate in the implementation of privacy, security and information policies which impact on Federal and State criminal justice operations and related statistical activities.'' See section 302(c)(22) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. § 3732(c)(22). The program is designed to assist States in upgrading the quality of State criminal history record systems and in increasing the utility of criminal history records for both criminal and non-criminal justice purposes. The program also provides for coordination among States and between States and BJS and other Federal agencies on national issues such as the interstate system for the exchange of criminal history record data.

The BJS Program was initiated over eighteen years ago, concurrent with the issuance of Department of Justice Regulations set out at 28 C.F.R. Part 20 which requires that States ensure that criminal history records are accurate, complete, secure, and disseminated only to authorized users. Since its inception, projects undertaken under the program have focussed on the

rapidly changing technology, legislation and policies affecting criminal history record systems. Of equal importance, the project has served as the primary liaison among the States and Federal agencies on issues of data quality and criminal record exchange. The program is also closely coordinated with the Bureau of Justice Assistance which administers the Edward Byrne State and Local Law Enforcement Formula Grant program. The 1990 amendments to the Omnibus Crime Control and Safe Streets Act of 1986, as amended, require that at least five percent of these grant funds be used for the improvement of criminal justice records.

Over the past eighteen years, five national conferences on criminal justice data quality and data management have been conducted under the proposal. The conferences have included speakers representing the Congress, the Department of Justice and State criminal justice practitioners, researchers, and members of the judiciary. Proceedings of the conferences have also been prepared and widely distributed.

In addition to the national conferences, smaller workshops have been conducted to explore the issues and technologies in emerging areas such as automated fingerprint technology, forensic uses of deoxyribonucleic acid (DNA), dissemination techniques and strategies to improve data quality. Documents prepared on the basis of State input at these workshops have formed the basis for a series of BJS reports on varying issues relating to data quality and information policy. In addition to DNA and AFIS, reports in this series address ''hot'' files, investigative files, original records of entry and the release of data for non-criminal justice purposes such as employment screening. These reports are available through the National Criminal Justice Reference Service (NCJRS).

On a more operational level, the project has also produced reports and training materials detailing specific strategies for improving data quality and three manuals on the auditing of data quality in criminal history record systems. Periodic reports have also been prepared following studies of, for example, the potential liability of law enforcement personnel for erroneous release of identifiable criminal history records and the impact of new identification technologies (such as retinal scans).

On an ongoing basis the program also maintains contact with representatives of the State repositories and other State personnel having responsibility for operation of the State criminal record system. In addition to serving as a continuing resource regarding the status of criminal record systems in the States, the project reviews changes in State legislation impacting on privacy and record management and, on a biannual basis, collects and classifies State legislation in the Compendium of State Privacy Legislation which is issued by BJS. Full texts of statutes are maintained both by the project and at NCJRS.

Major national surveys are also conducted under this project. Surveys have focussed on requirements of State legislation and the nature of State operating practices.

Funds for this project are subject to the availability of Department of Justice appropriations.

Objectives

The major purpose of this award is to support the continuation of activities currently being funded under the ongoing Justice Information program, as described above.

Type of Assistance

Assistance will be made available under a cooperative agreement.

Statutory Authority

The cooperative agreement to be awarded pursuant to this solicitation will be funded by the Bureau of Justice Statistics consistent with its mandate under 42 U.S.C. § 3732(c)(22).

Eligibility Requirements

The solicitation is open to non-profit organizations only.

Scope of Work

The objective of the proposed project is to continue activities initiated under the ongoing BJS justice information policy program. Specifically, the recipient of funds will:

1. Identify, on the basis of existing information and contact with the States, two issues relevant to current policies affecting criminal justice records, and prepare reports on these issues. Preparation of such reports should include, as appropriate, analyses of existing State legislation, current technology, and State activity in the area under consideration. If necessary, a workshop of State representatives should be convened to discuss and provide input for the reports. Final decisions on subjects for these reports will be made by BJS.

2. Conduct a fifty state review to identify new and amended legislation impacting on privacy, security and record procedures in each of the states; analyze the results of the legislative search and related state inquiries; and, prepare the 1996 update to the BJS series, Compendium of State Privacy and Security Legislation. The analysis should address issues identified in previous editions of the Compendium and data should be presented in previously developed formats. Full text and legislative analysis tables should be provided in an online fashion to be identified by BJS.

3. Convene a major national conference on the technical legislative policy and operational aspects of issues relating to criminal justice data quality. The conference, to be hosted jointly with BJS, should include high level Federal, State and local policy makers, representatives of the judiciary, criminal justice practitioners, researchers, and, if appropriate, representatives of State or Federal legislative bodies. To provide for the broader review of presentations and relevant materials, the proceedings should be compiled for publication by BJS. Time and location for the meeting will be jointly agreed upon with BJS. Costs under the project should cover staff, materials, presentations and logistics, but not cover costs of attendee participation or travel.

4. Convene and conduct one meeting of a working group to identify and address technical and policy issues relating to long range planning for the design and operation of state criminal history record repositories. The group should include representatives of the State repositories, judiciary, prosecutors, correctional agencies and other data users. The project should develop discussion materials and background information for use by the working group. The applicant will suggest three possible topics for this working group. Selection of persons to serve as part of the working group will be made jointly with BJS. A report describing the activities and recommendations of the working group should be prepared for submission to BJS.

5. Maintain a resource of information regarding State activity, legislation, and CHRI status and provide ad hoc assistance to States and to BJS on these matters. This may include assisting States through referrals to other States, reference to written materials, etc. Also, the recipient of funds will conduct ad hoc activities at the request of BJS involving, for example, the informal rapid turn-around telephone survey of States on a particular current issue or the collation of materials on a new issues associated with CHRI technology or policy.

All products will be submitted on a schedule to be determined jointly with BJS. BJS anticipates that the products

will be spaced throughout the period of the award.

Award Procedures

Proposals should describe in appropriate detail the efforts to be undertaken in furtherance of each of the activities described in the Scope of Work. Information should focus on activities to be undertaken in the initial 12 month period but should also include a general discussion of three year goals and objectives of the program. Information on staffing levels and qualifications should be included for each task and descriptions of experience relevant to the project should be included.

Applications will be competitively reviewed by a BJS selected panel which will make recommendations to the Director of BJS. Final authority to enter into a cooperative agreement is reserved for the Director who may, at his discretion, determine that none of the applications shall be funded.

Applications will be evaluated on the overall extent to which they respond to be goals of the criminal justice information program, demonstrate an understanding and ability to perform the specific activities to be conducted and appear to be fiscally feasible and efficient. In particular, the applicant will be evaluated on the basis of:

1. Knowledge and expertise in the current and historical conditions of criminal justice records systems as they exist at both the State and Federal level. Particular emphasis will be given to knowledge and experience relating to current technologies, the status of State and Federal legislation, current and prior operating policies and a historical and current knowledge of the issues which affect the exchange of data between State and Federal systems.

2. Expertise in the identification and analysis of issues and policies which affect the operation of criminal history records systems, the exchange of data among States and the Federal Government, and the release of data for noncriminal justice purposes.

3. Expertise and experience in the analysis of legislation and State regulations relating to criminal history records and the privacy of data maintained in the State criminal history record systems.

4. Contact and experience in dealing with Federal and State representatives on issues relating to criminal history record policies. Particular emphasis will be given to: (a) experience in dealing with relevant personnel in Federal agencies, such as INS, the FBI and the Bureau of Alcohol, Tobacco and Firearms, on issues relating to the development end improvement of national criminal history record systems and the use of criminal record data for criminal and noncriminal justice purposes; and (b) ongoing organizational and staff connections with representatives of the States (including criminal justice practitioners, policy makers, and record management personnel) sufficient to ensure direct State input to products produced under the project.

5. Demonstrated ability to produce high quality reports and conduct national conferences and workshops on sensitive issues for an audience of professional policy analysts, researchers, criminal justice practitioners, legislators and the general public.

6. Demonstrated fiscal, management and organization capacity (including availability of professional and support staff) suitable for providing sound program management for this multi-faceted effort.

7. Reasonableness of estimated costs for the total project and for individual cost categories.

Application and Awards Process

An original and three (3) copies of a full proposal must be submitted on SF–424 (Revision 1988) including the Certified Assurances. Proposals must be accompanied by OJP Form 4061/6, Certifications Regarding Lobbying, Debarment, Suspension and other Responsibility Matters; and Drug Free Workplace. Applicants must complete the certificate regarding lobbying and, if appropriate, complete and submit Standard Form LLL, Disclosure of Lobbying Activities.

Proposals must include both narrative descriptions and a detailed budget. The narrative shall describe activities as discussed in the previous section. The budget shall contain detailed costs of personnel, fringe benefits, travel, equipment, supplies and other expenses. Contractual services or equipment must be procured through competition or the application must contain an applicable sole source justification.

Awards will be made for a period of 12 months with an option for two additional continuation years conditional upon availability of funds and the quality of the initial performance and products. Costs are estimated at not to exceed $425.000 for the initial 12-month period.

Jan M. Chaiken,

Director, Bureau of Justice Statistics.

[FR Doc. 96–7247 Filed 3–25–96; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–31,870]

American Olean Title Company, Incorporated, Lansdale, Pennsylvania, and Operating in Various Locations in the States of Alabama et al.; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 26, 1996, applicable to all workers of American Olean Title Company, Incorporated, located in Lansdale, Pennsylvania. The notice will soon be published in the Federal Register.

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information provided by American Olean Title shows that worker separations have occurred at various operating facilities throughout the United States. Based on company-wide increased imports of title, the Department is amending the certification for workers of the subject firm to include service center workers and production workers at the various locations in the United States. The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports of title.

Due to a typographical error, the Department is also amending the impact date to February 15, 1996. The Department's notice of Certification incorrectly identified the impact date as February 15, 1995.

The amended notice applicable to TA–W–31,870 is hereby issued as follows:

All workers of American Olean Title Company, Incorporated, Lansdale, Pennsylvania (TA–W–31,870), and at the various locations cited below, who became totally or partially separated from employment on or after February 15, 1996 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974:

TA–W–31,870A Alabama
TA–W–31,870B Arizona
TA–W–31,870C California
TA–W–31,870D Connecticut
TA–W–31,870E Florida
TA–W–31,870F Georgia
TA–W–31,870G Illinois
TA–W–31,870H Indiana
TA–W–31,870I Kentucky
TA–W–31,870J Louisiana

TA–W–31,870K Maryland
TA–W–31,870L Massachusetts
TA–W–31,870M Minnesota
TA–W–31,870N Missouri
TA–W–31,870O Nevada
TA–W–31,870P New Jersey
TA–W–31,870Q New York
TA–W–31,870R Ohio
TA–W–31,870S Oklahoma
TA–W–31,870T Pennsylvania (except Lansdale)
TA–W–31,870U Tennessee
TA–W–31,870V Texas
TA–W–31,870W Utah
TA–W–31,870X Virginia
TA–W–31,870Y Washington
TA–W–31,870Z Wisconsin.

Signed at Washington, D.C. this 18th day of March 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–7260 Filed 3–35–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,614]

Christian Fashions Including Montana Fashions, El Paso, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 6, 1995, applicable to all workers of Christian Fashions located in El Paso, Texas. The notice was published in the Federal Register on January 26, 1996 (61 FR 2537).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers produce ladies' sportswear. The findings show that the subject firm was formerly operating under the name Montana Fashions at the same location.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports. Accordingly, the Department is amending the certification to include the workers of Montana Fashions.

The amended notice applicable to TA–W–31,614 is hereby issued as follows:

All workers of Christian Fashions, including Montana Fashions, El Paso, Texas who become totally or partially separated from employment on or after October 25, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 12th day of March 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–7261 Filed 3–25–96; 8:45 am]

BILLING CODE 4510–30–M

[TA-W–31,565 and TA-W–31,566]

Eastland Woolen Mill, Incorporated, Striar Textile Mill, Orono, Maine, Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Program Manager of the Office of Trade Adjustment Assistance for workers at Eastland Woolen Mill, Inc., & Striar Textile Mill, Orono, Maine. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W–31,565; Eastland Woolen Mill, Inc.
TA-W–31,566; Striar Textile Mill, Orono, Maine (March 15, 1996)

Signed at Washington, D.C. this 15th day of March, 1996.

Russell T. Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–7262 Filed 3–25–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,827 and TA–W–31,827A]

Major League, Inc., Jasper, Georgia; and Tellico Plains, Tennessee; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 30, 1996, applicable to all workers of Major League, Inc., located in Jasper, Georgia. The notice was published in the Federal Register on February 21, 1996 (61 FR 6659).

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that worker separations have occurred at the subject firms' Tellico Plains, Tennessee production facility. The workers are engaged in the production of sportswear.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports of apparel. Accordingly, the Department is amending the certification to cover the workers of Major League, Inc., Tellico Plains, Tennessee.

The amended notice applicable to TA–W–31,827 is hereby issued as follows:

All workers of Major League, Inc., Jasper, Georgia (TA–W–31,827), and Tellico Plains, Tennessee (TA–W–31,827A) engaged in employment related to the production of sportswear who became totally or partially separated from employment on or after December 27, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 18th day of March 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–7263 Filed 3–25–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31, 926]

McAllen Separation Co. Mt. Gilead, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 20, 1996 in response to a worker petition which was filed on January 29, 1996 on behalf of workers at McAllen Separation Co., Mt. Gilead, North Carolina.

A negative determination applicable to the petitioning group of workers was issued on January 29, 1996 (NAFTA—00699). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 18th day of March, 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–7264 Filed 3–25–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,959]

TRW, Incorporated Auburn, NY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 26, 1996 in response to a worker petition which was received on February 26, 1996 on behalf of workers at TRW, Incorporated, located in Auburn, New York.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 18th day of March, 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–7265 Filed 3–25–96; 845 am]

BILLING CODE 4510–30–M

Occupational Safety and Health Administration

NACOSH HazCom Workgroup Meeting

Notice is hereby given that a workgroup of the National Advisory committee on Occupational Safety and Health (NACOSH), established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act, will meet on the following dates: April 24–25 in N3437 A–D and June 12–13 in N4437 B–D in the Department of Labor Building located at 200 Constitution Avenue NW., Washington, DC. These meetings, which are open to the public, will run from 10:00 a.m. to approximately 4:30 p.m. the first day and from 8:00 a.m. to approximately 3:00 p.m. the second day.

The Occupational Safety and Health Administration (OSHA) has asked NACOSH to form a workgroup to identify ways to improve chemical hazard communication and the right-to-know in the workplace. OSHA has asked the Committee to provide OSHA with recommendations in approximately six months related to simplification of material safety data sheets, reducing the amount of required paperwork, improving the effectiveness of worker training, and revising enforcement policies so that they focus on the most serious hazards.

On April 24–25, the HazCom Workgroup will meet in Room N3437 A–D to review all issues and finalize the content of its report and recommendations. On June 12–13, the HazCom Workgroup will meet in Room N4437 B–D to review the total report, make any necessary changes and obtain concurrences of workgroup members.

It is anticipated that the final product of this workgroup will be submitted to the full National Advisory Committee on Occupational Safety and Health for action in the summer.

Written data, views or comments for consideration by the workgroup may be submitted, preferably with 20 copies, to Joanne Goodell at the address provided below. Any such submissions will be provided to the members of the Workgroup and will be included in the record of the meeting. Individuals with disabilities who need special accommodations should contact Tom Hall (202–219–8615) a week before each meeting.

For additional information contact: Joanne Goodell, Directorate of Policy, Occupational Safety and Health Administration, Room N–3641, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 219–8021, extension 107.

Signed at Washington, DC this 20th day of March, 1996.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 96–7266 Filed 3–25–96; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration

ACTION: Notice of availability of proposed records schedule; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Request for copies must be received in writing on or before May 10, 1996. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Record Appraisal and Disposition Division (NIR), National Archives and Records Administration, College Park, MD 20740. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office of program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Housing and Urban Development (N1–207–96–4). Input data and output reports for the Consolidated Single Family Statistical System, the master files and annual published reports for which are designated for permanent retention.

2. Bonneville Power Administration (N1–305–95–2). Routine and facilitative records relating to power management.

3. Bureau of Export Administration (N1–476–95–1). Audio-tapes of Technical Advisory Committee meetings, 1980–1994.

4. Economic Development Administration (N1–378–96–1). Change in disposition standards for Approved Public Works and Local Public Works Case Files.

5. Postal Rate Commission (N1–458–96–1). Library Reference Files.

6. Securities and Exchange Commission (N1–266–96–2). Electronic Data Gathering, Analysis, Evaluation and Retrieval (EDGAR) system. (Public data files are designated for preservation).

7. Tennessee Valley Authority, Resource Group, Flood Protection (N1–142–92–13). Microdata, studies, information files and databases of defunct program.

8. Tennessee Valley Authority (N1–142–93–16). Copies of local and national television newscasts.

9. Tennessee Valley Authority (N1–142–95–1). Quantum Meter Outage Reports and routine and facilitative correspondence files of the Energy Resource Planning and Engineering Department.

10. Tennessee Valley Authority (N1–142–95–3). Duplicate copies of photographs and biographies of TVA officials used to produce press releases that are preserved for transfer to the National Archives.

Dated: March 18, 1996.

James W. Moore,

Assistant Archivist for Records Administration.

[FR Doc. 96–7216 Filed 3–25–96; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: National Labor Relations Board.

TIME AND DATE: 10:00 a.m. Monday, February 15, 1996.

PLACE: Board Conference Room, Eleventh Floor, 1099 Fourteenth St., NW., Washington, DC 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices); and 9(B) (disclosure would significantly frustrate implementation of a proposed Agency action * * *).

MATTERS TO BE CONSIDERED: Budget.

CONTACT PERSON FOR MORE INFORMATION: John J. Toner, Executive Secretary, Washington, DC 20570, Telephone: (202) 273–1940.

Dated, Washington, DC, March 22, 1996.

By direction of the Board:

John J. Toner,

Executive Secretary, National Labor Relations Board.

[FR Doc. 96–7452 Filed 3–22–96; 1:48 pm]

BILLING CODE 7545–01–M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: National Labor Relations Board.

TIME AND DATES: 10:00 a.m. Monday, February 15, 1996.

PLACE: Board Conference Room, Eleventh Flood, 1099 Fourteenth St., N.W., Washington, D.C. 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices); and (9)(B) (disclosure would significantly frustrate implementation of a proposed Agency action . . .).

MATTERS TO BE CONSIDERED: Budget.

CONTACT PERSON FOR MORE INFORMATION: John J. Toner, Executive Secretary, Washington, D.C. 20570, Telephone: (202) 273–1940.

Dated, Washington, D.C., March 22, 1996.

By direction of the Board:

John J. Toner,

Executive Secretary, National Labor Relations Board.

[FR Doc. 96–7453 Filed 3–22–96; 1:48 pm]

BILLING CODE 7545–01–M

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of March 25, April 1, 8, and 15, 1996.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 25

Wednesday, March 27

10:30 a.m.
Meeting with Chairman of Nuclear Safety Research Review Committee (NSRRC) (Public Meeting)
(Contact: Jose Cortez, 301–415–6596)

Week of April 1—Tentative

Thursday, April 4

10:00 a.m.
Briefing on PRA Implementation Plan (Public Meeting)
(Contact: Ashok Thadani, 301–415–1274)

11:30 a.m.
Affirmation Session (Public Meeting) (if needed)

2:00 p.m.
Briefing on Status of Activities with CNWRA and HLW Program (Public Meeting)
(Contact: Shirley Fortuna, 301–415–7804)

Week of April 8—Tenative

There are no meetings scheduled for the Week of April 8.

Week of April 15—Tentative

There are no meetings scheduled for the Week of April 15.

ADDITIONAL INFORMATION: Briefing on U.S. Enrichment Corporation Certification (Public Meeting) originally scheduled for Tuesday, March 19 was rescheduled for Friday, March 22.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

* * * * *

Dated: March 21, 1996.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 96–7458 Filed 3–22–96; 2:09 pm]

BILLING CODE 7590–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, April 2, 1995.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6405A Special Investigation Report: Robinson Helicopter Company R22 Loss of Main Rotor Control Accidents

NEWS MEDIA CONTACT: Telephone: (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: March 22, 1996.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 96–7454 Filed 3–22–96; 1:48 pm]

BILLING CODE 7533–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Extension of a Currently Approved Information Collection: RI 38–45

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management intends to submit to the Office of Management and Budget a request for extension of a currently approved information collection. RI 38–45, We Need the Social Security Number of the Person Named Below, is used by the Civil Service Retirement System and the Federal Employees Retirement System to identify the records of individuals with similar of the same names. It also needed to report payments to the Internal Revenue Service.

We estimate 3,000 RI 38–45 forms are completely annually. Each form takes approximately 5 minutes to complete. The annual estimated burden is 250 hours.

For copies to this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@mail.opm.gov

DATES: Comments on this proposal should be received on or before May 28, 1996.

ADDRESSES: Send or deliver comments to—Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street NW., Room 3349, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomy, Management Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 96–7246 Filed 3–25–96; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–21834; File No. 812–9802]

Principal Mutual Life Insurance Company, et al.

March 20, 1996.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of Application for Amendment to Order Granting Exemptions Pursuant to the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Principal Mutual Life Insurance Company (''Principal Mutual''), Principal Mutual Life Insurance Company Separate Account B (the ''Account'') and Princor Financial Services Corporation (''Princor'').

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to Section 6(c) of the Act to amend order granting exemptions from the provisions of Sections 2(a)(35), 26(a)(2)(C), 27(a)(2) and (3), and 27(c)(2) thereof.

SUMMARY OF APPLICATION: Applicants have previously received relief from the provisions of the Act set forth above to the extent necessary to permit the issuance and sale of certain variable annuity contracts (''Contracts'') with prescribed sales loads and mortality and expense risk charges (the ''Prior Order'').[1] This application seeks additional relief so that: (a) The exemption from Sections 26(a)(2)(C) and 27(c)(2) will extend to the mortality and expense risk charges under the Contracts as revised by Principal Mutual; and (b) the exemptive relief regarding the mortality and expense risk charges and the relief granted by the Prior Order will extend to any variable annuity contracts that may be offered in the future that are substantially similar in all material respects to the Contracts (''Future Contracts'') that are funded by the Account or any other separate accounts established in the future by Principal Mutual (''Future Accounts'') and that may be offered by Princor or any other members of the National Association of Securities Dealers, Inc. (''NASD'') that may in the future serve as principal underwriters of the Contracts or Future Contracts (''Future Underwriters'').

FILING DATE: The application was filed on October 6, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on April 15,1996, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, c/o Kristian Anderson, Counsel, The Principal Financial Group, Des Moines, Iowa 50392–0300.

FOR FURTHER INFORMATION CONTACT: Kevin M. Kirchoff, Senior Counsel, or Wendy Friedlander, Deputy Chief, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations and Legal Analysis

1. Principal Mutual is a mutual life insurance company with its home office in Des Moines, Iowa. The Account was established on January 12, 1970, as a separate account as defined in Section 2(a)(37) of the Act, and is registered pursuant to the Act as a unit investment trust (file no. 811–2091). Princor, a wholly-owned subsidiary of Principal Mutual, is the principal underwriter of the Contracts, and is a broker-dealer registered under the Securities Exchange Act of 1934 and a member of the NASD.

2. Principal Mutual assumes mortality and expense risks under the Contracts. The mortality risk is the risk that annuitants receiving annuity payments may live for a longer period of time than estimated. Principal Mutual assumes this mortality risk by virtue of annuity rates incorporated into the Contract which cannot be changed as to a current plan participant (except to make them more favorable to the participant). This assures each annuitant that his or her longevity will not have an adverse effect on the amount of annuity payments. The expense risk assumed by Principal Mutual is the risk that the allowance for administration expenses in the annuity

[1] *See Principal Mutual Life Insurance Company, et al.*, Inv. Co. Act Rel. No. 18798 (June 18, 1992)(1992 WL 150835 (SEC)) (notice) and Inv. Co. Act. Rel. No. 18853 (July 15, 1992)(1992 WL 172828 (SEC)) (order); file no. 812–7882.

conversion rates will be insufficient to cover actual costs of administration during an annuity pay out period.

3. For assuming these risks, Principal Mutual, in determining unit values for the Account and variable annuity payments, makes a charge as of the end of each valuation period against the assets of the Account held with respect to the Contract. If the charge is insufficient to cover the actual costs of the mortality and expense risk assumes, the financial loss will fall on Principal Mutual; conversely, if the charge proves more than sufficient, the excess will be a gain to Principal Mutual.

4. The relevant portions of Sections 26(a)(2)(C) and 27(c)(2) of the Act prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than the sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services of a character normally performed by the bank itself.

5. In the Prior Order, Applicants received exemptive relief necessary to deduct a mortality and expense risk charge from the assets of the Account. For assuming mortality and expense risks, Principal Mutual currently deducts from each division of the Account a charge at a simple annual rate of 0.33 percent for certain Contracts and 0.55 percent for other Contracts. In accordance with the right it has reserved to increase the charge up to 1.25 percent, subject to certain limitations, Principal Mutual intends to increase those charges to 0.42 percent and 0.64 percent, respectively.

6. Contracts issued prior to March 31, 1995, contained an additional limitation that permitted a change in the mortality and expense risk charge only after the Contract had been in effect for at least one year. That limitation has been eliminated for all Contracts issued subsequent to that date.

7. In order to avoid questions regarding the scope of the Prior Order, Applicants seek an order pursuant to Section 6(c) of the Act amending the Prior Order to permit the issuance and sale of the Contracts providing for the mortality and expense risk charges described above, including the right to increase the charges up to a maximum of 1.25 percent.

8. Applicants represent that the maximum charge of 1.25 percent is within the range of industry practice for comparable annuity products. This representation is based upon an analysis by Principal Mutual of publicly available information about selected similar industry products, taking into consideration such factors as the method used in charging sales loads, any contractual right to increase charges above current levels and the existence of charges against separate account assets for other than mortality and expense risks. Principal Mutual will maintain its principal office, available to the Commission upon request, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, the comparative survey made.

9. Applicants acknowledge that the sales load and the deferred sales charge under the Contracts will be insufficient to cover all costs relating to the distribution of the Contracts and if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by sales charges. In such circumstances a portion of the mortality and expense risk charge might be viewed as providing for a portion of the costs relating to distribution of the Contracts. Notwithstanding the foregoing, Principal Mutual has concluded that there is reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit the Account, the Contractholders and plan participants. The basis for that conclusion is set forth in a memorandum which will be maintained by Principal Mutual at its principal office and will be available to the Commission upon request.

10. Principal Mutual represents that the Account will invest only in underlying mutual funds which undertake, in the event such funds should adopt any plan under Rule 12b–1 to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of the members of which are not ''interested persons'' of such fund within the meaning of Section 2(a)(19) of the Act.

11. Applicants also request that the Prior Order be amended to provide that the exemptive relief from Sections 26(a)(2)(C) and 27(c)(2) in connection with the mortality and expense risk charge extend to Future Contracts, funded by Future Accounts and sold through Future Underwriters. Applicants assert that extending the relied concerning the mortality and expense risk charge to Future Contracts, funded by Future Accounts and sold through Future Underwriters, is appropriate in the public interest. An order so providing should promote competitiveness in the variable annuity contract market by eliminating the need for filing redundant exemptive applications, thereby reducing Principal Mutual's costs. The delay and expense of repeatedly seeking exemptive relief for substantially similar contracts, new separate accounts or new principal underwriters could impair Principal Mutual's ability to take effective advantage of business opportunities that might arise. There is no benefit or additional protection afforded to investors by requiring Applicants repeatedly to seek exemptive relief with respect to the same issues addressed in this application.

12. Applicants represent that, before any Future Contracts are made available for sale to the public, Principal Mutual will have determined that the mortality and expense risk charge under the Future Contracts is within the range of industry practice for comparable annuity products based upon its analysis of then publicly available information about selected similar industry products. Principal Mutual will maintain at its principal office, available to the Commission upon request, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, the comparative survey made.

13. Applicants also represent that, if the sales charges under any Future Contracts are expected to be insufficient to cover the costs of distributing the Contracts, Principal Mutual, before such Future Contracts are made available for sale to the public, will have concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Future Contracts will benefit the Account or the Future Account, as applicable, the contractholders and plan participants. The basis for that conclusion will be set forth in a memorandum which will be maintained by Principal Mutual at its principal office and will be available to the Commission upon request.

14. Principal Mutual represents that, if the Future Contract is funded by a Future Account, the Future Account will invest only in an underlying mutual fund which undertakes, in the event such fund should adopt any plan under Rule 12b–1 to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of the members of which are not ''interested persons'' of

such fund within the meaning of Section 2(a)(19) of the Act.

15. In the Prior Order, Applicants also received exemptive relief from the provisions of Sections 2(a)(35), 27(a)(2) and 27(a)(3) to permit the use of the sales load pattern and payment arrangements described in the application that resulted in the Prior Order. Applicants now request that this relief extend to Future contracts that are funded by the Account or any Future Accounts and that may be offered by Princor or any Future Underwriters. Applicants assert that extending the relief previously granted in this manner is appropriate in the public interest for the same reasons as those discussed in paragraph 11, above.

16. The reasons advanced in support of the exemptive application resulting in the Prior Order apply with equal force, Applicants assert, to Future Contracts, Future Accounts and Future Underwriters. The abuse intended to be curbed by Section 27(a)(3) (excessive front-end loading of periodic payment plans) is not, and will not be presented by the sales load structure of the Contracts or Future Contracts.

Conclusion

For the reasons summarized above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–7237 Filed 3–25–96; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration (Transworld Telecommunications, Inc., Common Stock, $0.001 Par Value) File No. 1–13410

March 20, 1996.

Transworld Telecommunications, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Securities'') from listing and registration on the Boston Stock Exchange Incorporated (''BSE'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, it has recently signed an agreement with Pacific Telesis Group (''PTG'') and other parties to sell all of its interests in its wireless cable assets to PTG and then liquidate the company as reported to the Commission in the company's Form 10–KSB for the year ended October 31, 1995. The Board of Directors of TTI has subsequently approved a plan of liquidation which includes terminating all of TTI's contractual relationships and agreements.

Any interested person may, on or before April 10, 1996, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–7229 Filed 3–25–96; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 96–012]

Navigation Safety Advisory Council (NAVSAC) and National Boating Safety Advisory Council (NBSAC) Joint Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: NAVSAC and NBSAC will meet jointly to discuss various issues relating to commercial and recreational boat safety. The meeting will be open to the public.

DATES: The NAVSAC/NBSAC meeting will be held April 27 through 29, 1996, from 8:00 a.m. to approximately 5:00 p.m. each day except Sunday, when committee meetings will end at 11:30 a.m. Written material must be received on or before April 19, 1996.

ADDRESSES: The NAVSAC/NBSAC meeting will be held at the Parc Fifty Five Hotel, 55 Cyril Magnin, San Francisco, CA. Written material should be submitted to Margie G. Hegy, NAVSAC Executive Director, Commandant (G–MVO–3), or Albert J. Marmo, NBSAC Executive Director (G–NAB), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Margie G. Hegy, NAVSAC Executive Director, Commandant (G–MVO–3), or Albert J. Marmo, NBSAC Executive Director (G–NAB), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, telephone (202) 267–0415 or (202) 267–0950.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 § 1 *et seq.* The agenda for the joint NAVSAC/NBSAC sessions will include discussion of the following topics:

(1) Prevention Through People Initiative;

(2) Recreational Boating Safety Program Direction;

(3) Vessel Visibility and Identification;

(4) Status of Nautical Charting Program;

(5) Multiple Use Waterway Conflicts; and,

(6) Prioritizing Commercial and Recreational Boating Issues.

The meeting will begin on Saturday morning with separate NAVSAC and NBSAC plenary sessions before the joint session begins at 10:15 a.m. Items to be discussed in these sessions include boat occupant protection and the status of differential global positioning system (DGPS) and the Coast Guard's radionavigation responsibilities.

Committee meetings will be held on Sunday morning. NBSAC's Boat Occupant Protection Subcommittee will meet from 8:00 to 11:00 a.m. Prevention Through People and Vessel Visibility and Identification Committee, comprised of members of both NAVSAC and NBSAC will meet from 8:30 to 11:30 a.m.

NAVSAC/NBSAC will reconvene on Monday at 8:00 a.m. in joint plenary session to hear committee reports, and break into separate afternoon plenary sessions. Topics to be discussed in NAVSAC's plenary session include Implementation of the 1995 STCW Amendments and Inland Navigation Rule 9. NBSAC will discuss the emergency position indicating radio beacon 121.5 MHz transition plan, nonprofit grant solicitation, and the

Boat Occupant Protection Subcommittee report.

Attendance at the meeting is open to the public. With advance notice, and at the Chairman's discretion, members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations should notify the Executive Director, listed above under **ADDRESSES**, no later than April 19, 1996. Written material may be submitted at any time for presentation to the Councils. However, to ensure advance distribution to each Council member, persons submitting written material are asked to provide 21 copies to the Executive Director no later than April 19, 1996.

Date: March 19, 1996.

Rudy K. Peschel,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 96–7170 Filed 3–25–96; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

SUMMARY: Notice is hereby given of a meeting of the Aviation Security Advisory Committee.

DATES: The meeting will be held April 23, 1996 from 9 a.m. to 12 p.m.

ADDRESS: The meeting will be held in the MacCracken Room 10th floor, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202–267–7451.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Security Advisory Committee to be held April 23, 1996, in the MacCracken Room, tenth floor, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC. The agenda for the meeting will include reports on the Universal Access System, Rewrites of FAR 107 and 108, Status of RTCA, and AVSEC Baseline. Attendance at the April 23, 1996, meeting is open to the public but is limited to space available. Members of the public may address the committee only with the written permission of the chair, which should be arranged in advance. The chair may entertain public comment if, in its judgment, doing so will not disrupt the orderly progress of the meeting and will not be unfair to any other person. Members of the public are welcome to present written material to the committee at any time. Persons wishing to present statements or obtain information should contact the Office of the Associate Administrator for Civil Aviation Security, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202–267–7451.

Issued in Washington, DC on March 20, 1996.

Quinten T. Johnson,

Acting Director of Civil Aviation Security and Policy Planning.

[FR Doc. 96–7298 Filed 3–25–96; 8:45 am]

BILLING CODE 4910–13–M

Research and Special Programs Administration

[Docket PS–142; Notice 3]

Risk Management Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Public meeting notice.

SUMMARY: This notice announces a public meeting, Risk Management and the Pipeline Industry, Your Input into Regulatory Reform, to discuss Government and industry work on the feasibility and benefits of using risk management to improve safety and efficiency in the pipeline industry. The Risk Management Quality Team, which represents the pipeline industry, Government, and the public, will discuss issues related to an interim risk management standard, a regulatory framework for risk management, performance measures, and communication with the public. Pipeline companies will share information on their risk management programs.

DATES: The public meeting will be from 7 p.m. to 9 p.m. on April 14 and from 8 a.m. to 5 p.m. on April 15 at the Westin Galleria Hotel in Houston, Texas. The sponsors need to know the number of participants to have enough conference background materials and space in the main meeting and break out session rooms. To register for the April 14 and 15 meeting, please contact Allie Chamberlain, API, 1220 L ST, NW, Washington, D.C., 20005, o: (202) 682–8229, fax: (202) 682–8222. Participants may choose to pay a fee to cover lunch and refreshments at breaks. A fee is not required to attend or to participate in the meeting. People who are unable to attend may submit written comments in duplicate on moving toward conducting risk management demonstration projects by May 15, 1996. Interested people should submit as part of their written comments all material that is relevant to statements of fact or argument. Late filed comments will be considered as far as practicable.

ADDRESSES: The public meeting will be at the Westin Galleria Hotel, 5060 West Alabama, Houston, TX 77056, (713) 960–8100.

Send written comments in duplicate to the Dockets Unit, Room 8421, RSPA, DOT, 400 Seventh St., SW, Washington, DC 20590–0001. Identify the docket and notice numbers in the notice heading.

All comments and docketed material will be available for inspection and copying in the Dockets Unit, Room 8421, between 8:30 a.m. and 4:30 p.m. Monday thru Friday.

FOR FURTHER INFORMATION CONTACT: Melanie Barber or Eben Wyman, OPS, DOT, Room 2335, 400 Seventh Street, S.W., Washington, D.C. 20590–0001, fax: (202) 366–4566, Melanie Barber's office: (202) 366–4560, e-mail: barberm@rspa.dot.gov and Eben Wyman's office: (202) 366–0918, e-mail: wymane@rspa.dot.gov.

SUPPLEMENTARY INFORMATION

I. Background

The first risk management public meeting, held November 6–9, 1995, in McLean, Virginia, gave over four hundred participants a chance to share their views on risk management. The meeting featured public and private sector risk management leaders and break-out sessions to address the many challenges that moving from the current regulatory system to conducting risk management demonstration projects poses. The April meeting will address the issues that were raised at the November meeting and help OPS and the pipeline industry create the foundation for the risk management demonstration projects. These projects will test whether a company creating a plan to manage risks can equal or exceed the safety level reached by complying with current regulations.

The pipeline industry's move toward risk management results from the pipeline industry's desire to demonstrate its willingness to improve pipeline safety, from OPS' and the pipeline industry's recognition that cost effective improvements can be made outside the current regulatory environment, and from the public's interest in OPS protecting people and the environment from the dangers pipelines pose. OPS, pipeline industry, State, and public representatives have been working on a Risk Management Quality Team to create, evaluate, and test an alternative approach to improving pipeline safety. Risk management assigns the greatest assets to the greatest risks pipelines pose. It systematically applies management policies, procedures, resources, and

practices to analyzing, assessing, and controlling risks to protect the public, the environment, and company employees and assets. The meeting is designed for all pipeline stakeholders to learn more about how risk management would work in the pipeline industry and the effect it would have on the environment, human safety, and all stakeholders. The benefits the meeting offers are: (1) Learning about risk management processes and tools pipeline companies are using, (2) contributing ideas on the technical standard, regulatory framework, and baseline safety performance measures for the risk management demonstration program, and (3) considering whether a company would like to compete to conduct a demonstration program.

II. Risk Management Public Meeting

A risk management drama will highlight the challenges OPS, State pipeline regulators, the pipeline industry, and the public will face when risk management demonstration projects are conducted. At the April 15 and 15 meeting, speakers, panel members, and the risk management drama cast will include: representatives from OPS Headquarters and Regions, State pipeline safety offices, fire fighting and hazardous material response officers, the public, pipeline trade associations, and companies including Chevron, Shell, Tenneco, Natural Gas Pipe Line, American Natural Resources, Enron, and Mapco.

Key topics include technical standards, a risk management regulatory framework, effective risk communication, risk management demonstration projects, safety performance measures, how to measure program effectiveness, how state and federal regulators could interact with industry, and how much information companies will have to share with OPS. Sponsoring the April 14 and 15, 1996, meeting are the Office of Pipeline Safety (OPS), the American Petroleum Institute (API), the Association of Oil Pipe Lines (AOPL), the American Gas Association (AGA), the Gas Research Institute (GRI), the Interstate Natural Gas Association of America (INGAA), the American Public Gas Association (APGA), NACE International, and the National Association of Regulatory Utility Commissioners (NARUC).

Participants will get the latest information on the Risk Management Quality Team's work and public comments on the Federal Register notice outlining a draft regulatory framework for risk management demonstration projects. Break out sessions will allow participants to help design program elements needed for the risk management demonstration projects and will address questions from the November meeting.

For information on the April 14 and 15 meeting, please contact Melanie Barber, OPS; John Erickson, A.G.A., 1515 Wilson Blvd., Arlington, VA 22209–2469, o: (703) 841–8450, fax: 841–8492, e-mail: jerick06.reach.com; Michele Joy, AOPL, 1101 Vermont Ave., N.W., Washington, D.C. 20005–3521, o: (202) 408–7970, fax: 408–7983; Marty Matheson, API, 1220 L St., N.W., Washington, D.C. 20005, o: (202) 682–8192, fax: (202) 682–8222, e-mail: matheson@api.org; Bob Cave, APGA, Suite 102, 11094–D Lee Highway, Fairfax, VA 22030, o: (703) 352–3890, fax: 352–1271; Tina Thomas, GRI, Suite 730 North, 1331 Pennsylvania Ave., N.W., Washington, D.C. 20004, o: (202) 662–8937, fax: 347–6925, e-mail: cthomas@gri.org; Terry Boss, INGAA, Suite 300 West, 555 Thirteenth St., N.W., Washington, D.C. 20004, o: (202) 626–3234, fax: 626–3249, e-mail: tboss@ingaa.org; Shelley Leavitt Nadel, NACE International, P.O. Box 21834, Houston, TX 77218–8340, e-mail: shelley@mail.nace.org; or Rick Marini, NARUC, NH Public Utilities Commission, 8 Old Suncook RD, Concord, NH 03301, o: (603) 271–2443, fax: (603) 271–3878.

Issued in Washington, DC, on March 21, 1996.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 96–7289 Filed 3–25–96; 8:45 am]

BILLING CODE 4910–60–P

Surface Transportation Board

[STB Ex Parte No. 290 (Sub No. 5) (96–2)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved a second quarter 1996 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The second quarter RCAF (Unadjusted) is 1.063. The second quarter RCAF (Adjusted) is 0.769, a decrease of 1.7% from the first quarter 1996 RCAF (Adjusted).

EFFECTIVE DATE: April 1, 1996.

FOR FURTHER INFORMATION CONTACT: H. Jeff Warren, (202) 927–6243. TDD for the hearing impaired: (202) 927–5721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision write to, call, or pick up in person from: DC NEWS & DATA, INC., Room 2229, 1201 Constitution Avenue, N.W., Washington, DC 20423, or telephone (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

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

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: March 19, 1996.

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

Vernon A. Williams,

Secretary.

[FR Doc. 96–7240 Filed 3–25–96; 8:45 am]

BILLING CODE 4915–00–P

Surface Transportation Board [1]

[STB Finance Docket No. 32799]

Economic Development Rail Corporation and Economic Development Rail II Corporation—Exemption—Common Control

Economic Development Rail Corporation (EDRC) and Economic Development Rail II Corporation (EDR–II), non-profit quasi-public entities, have jointly filed a notice of exemption for common control because both entities own active rail lines that are managed by the same group of trustees and directors.[2] EDRC owns a rail line in and around Youngstown, OH, that is operated by the Youngstown and Austintown Railroad, and EDR–II owns a rail line in and around Warren, OH,

[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 decision notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323.

[2] Petitioners state that they neglected to file a notice of exemption for common control upon EDR–II's reactivating an abandoned rail line from CSX Transportation, Inc., in 1993. Petitioners seek to correct that omission by filing this notice of exemption. In addition, in a filing made by EDR–II in Finance Docket No. 32798 contemporaneous with the filing of this notice of exemption, EDR–II is requesting an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10902 for EDR–II to acquire certain rail lines in the Warren, OH area from Consolidated Rail Corporation (Conrail). The lines to be acquired from Conrail cross, but do not connect with lines already owned by EDR–II.

that is operated by the Warren & Trumbull Railroad Company.

Petitioners state that: (1) The rail lines owned by EDRC and EDR–II do not physically connect, (2) there are no plans to acquire or operate additional rail lines for the purpose of making a connection; and (3) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Board and served on: Robert A. Wimbish, Suite 420, 1920 N Street, N.W., Washington, D.C. 20036.

Decided: March 20, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–7242 Filed 3–25–96; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 32877]

Pioneer Railcorp; Acquisition of Control Exemption; KNRECO, Inc., d/b/a/ Keokuk Junction Railway

Pioneer Railcorp. (Pioneer), a noncarrier holding company, has filed a notice of exemption to acquire a controlling interest (66.62% of the stock) of KNRECO, Inc., d/b/a Keokuk Junction Railway (KJRY) from its majority shareholder John Warfield. KJRY is a Class III common carrier railroad which owns 38 miles of track as follows: 28.4 miles of track from Keokuk to LaHarpe, Hancock County, IL, from MP 195.0 to MP 223.4; 5.1 miles of track from Hamilton to Warsaw, Hancock County, IL, from MP 222.6 to MPW 227.7 (of which 1.5 miles are actively operated from MPW 222.6 to MP 224.1) and 4.5 miles of track extending from Keokuk westward from MP 0.0 to MP 4.5 (of which 2.5 miles are actively operated from MP 0.0 to MP 2.5). Pioneer will make a tender offer to acquire the remaining stock of KJRY. The transaction was scheduled to be consummated on or after March 8, 1996.

Pioneer owns and controls eight existing Class III shortline rail carriers: West Michigan Railroad Co., operating in Michigan; Fort Smith Railroad Co., operating in Arkansas; Alabama Railroad Co., operating in Alabama; Mississippi Central Railroad Co., operating in Mississippi and Tennessee; Alabama & Florida Railway Co., operating in Alabama; Decatur Junction Railway Co., operating in Illinois; Vandalia Railroad Company, operating in Illinois; and Minnesota Central Railroad Co., operating in Minnesota.

Pioneer states that: (i) The railroads will not connect with each other or any railroad in their corporate family; (ii) the acquisition of control is not part of a series of anticipated transactions that would connect the nine railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32877, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Keith G. O'Brien, Esq., Rea, Cross & Auchincloss, Suite 420, 1920 N Street, N.W., Washington, DC 20036.

Decided: March 20, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–7241 Filed 3–25–96; 8:45 am]

BILLING CODE 4915–00–P

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[1] The ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission 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. 11323.

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 96–19]

Request for Public Comments Concerning Dissemination of Existing Information Product and Elimination of Microfiche

AGENCY: Customs Service, Department of the Treasury.

ACTION: General notice; extension of comment period.

SUMMARY: On February 22, 1996, Customs published in the Federal Register a document inviting public comments regarding its intention to provide Customs rulings, future publications and additional information in CD–ROM and the Internet formats with built-in search capabilities and ''hypertext'' links. The document also requested comments regarding the possible elimination of the microfiche format used to presently supply rulings to the public by subscription. Comments were to be received on or before March 25, 1996. This document extends for an additional 30 days the period of time within which interested members of the public may comment on the proposals.

DATES: Comments must be received on or before April 25, 1996.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, Franklin Court, 1099 14th Street N.W., Suite 4000W, Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

For contents and technical aspects of the CD–ROM: Howard Plofker, 202–482–7077.

For the Internet: Kathy Davis, 202–927–0255.

For the microfiche: Thomas Budnik, 202–482–6909.

SUPPLEMENTARY INFORMATION:

Background

On February 22, 1996, Customs published a document in the Federal Register (61 FR 6892) requesting public comments concerning proposals to provide rulings, future publications and additional information in two new formats (CD–ROM and the Internet) with built-in search capabilities and ''hypertext'' links, and to eliminate one format used to supply rulings to the public by subscription (microfiche). Comments were requested by March 25, 1996.

Customs has been requested to extend the period of time for comments to allow interested parties to have more time to consider the proposals. Customs believes that it would be appropriate to grant the request. Accordingly, the period of time for the submission of comments is being extended 30 days.

Dated: March 21, 1996.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 96–7283 Filed 3–25–96; 8:45 am]

BILLING CODE 4820–02–P

Fiscal Service

[Dept. Circ. 570, 1995 Rev., Supp. No. 7]

Surety Companies Acceptable on Federal Bonds: Carolina Casualty Insurance Company

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under Sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1995 Revisions, on page 34438 to reflect this addition:

Carolina Casualty Insurance Company, BUSINESS ADDRESS: P.O. Box 2575, Jacksonville, FL 32203, Telephone No. (904) 363–0900. UNDERWRITING LIMITATION b/: $5,080,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Florida.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed or downloaded by calling the U.S. Department of the Treasury, Financial Management Service, computerized public bulletin board system (FMS Inside Line) at (202) 874–6817/7034/6953/6872. A hard copy may be purchase from the Government Printing Office (GPO), Washington, DC, telephone (202) 512–0132. When ordering the Circular from GPO, use the following stock number: 048–000–00489–0.

For further assistance, contact the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6F04, Hyattsville, MD 20782, telephone (202) 874–6696.

Dated: March 13, 1996.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Services.

[FR Doc. 96–7172 Filed 3–25–96; 8:45 am]

BILLING CODE 4810–35–M

Office of Thrift Supervision

[AC–19; OTS No. 01570]

Citizens Savings Bank, F.S.B., Normal, Illinois; Approval of Conversion Application

Notice is hereby given that on March 11, 1996, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Citizens Savings Bank, F.S.B., Normal, Illinois, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Central Regional Office, Office of Thrift Supervision, 200 West Madison Street, Suite 1300, Chicago, Illinois 60606.

Dated: March 18, 1996.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 96–7186 Filed 3–25–96; 8:45 am]

BILLING CODE 6720–01–P

[AC–20; OTS No. 2721]

First Federal Bank of Arkansas, FA, Harrison, Arkansas; Approval of Conversion Application

Notice is hereby given that on March 19, 1996, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Bank of Arkansas, FA, Harrison, Arkansas, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Dallas, Texas 75039–2010.

Dated: March 20, 1996.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 96–7187 Filed 3–25–96; 8:45 am]

BILLING CODE 6720–01–P

federal register

Tuesday
March 26, 1996

Part II

Department of Housing and Urban Development

24 CFR Part 3500

Real Estate Settlement Procedures Act; Streamlining Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3500

[Docket No. FR–4023–F–01]

RIN 2502–AG69

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Real Estate Settlement Procedures Act; Streamlining Final Rule

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations under the Real Estate Settlement Procedures Act (RESPA). In an effort to comply with the President's regulatory reform initiatives, this rule streamlines the RESPA regulations by eliminating provisions that repeat statutes or are otherwise unnecessary. A number of the appendices that were intended to be illustrative, rather than regulatory, have been removed from codification, but will be made available by the Department as Public Guidance Documents. Therefore, this final rule makes the RESPA regulations clearer and more concise.

EFFECTIVE DATE: April 25, 1996.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, Office of Consumer and Regulatory Affairs, Room 5241, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone number (202) 708–4560 (this is not a toll-free number); or for legal questions: Kenneth A. Markison, Assistant General Counsel for GSE/RESPA, or Grant E. Mitchell, Senior Attorney for RESPA, Room 9262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone number (202) 708–1550 (this is not a toll-free number). For hearing- or speech-impaired persons, this number may be accessed via TDD by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, the Department of Housing and Urban Development conducted a page-by-page review of its regulations to determine which could be eliminated, consolidated, or otherwise improved. HUD has determined that the regulations for implementing RESPA can be improved and streamlined by eliminating unnecessary provisions.

Several provisions in the regulations repeat statutory language from the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601 *et seq.* It is unnecessary to maintain statutory requirements in the Code of Federal Regulations (CFR), since those requirements are otherwise fully accessible and binding. Furthermore, if regulations contain statutory language, HUD must amend the regulations whenever Congress amends the statute. Therefore, this final rule will remove repetitious statutory language and replace it with a citation to the specific statutory section for easy reference. For example, § 3500.19(a) has been substantially streamlined to delete provisions that simply repeated statutory provisions that do not need to be implemented by regulation.

This final rule also removes from codification several of the appendices that previously accompanied part 3500. The Department intends to preserve the material contained in the appendices to be removed, but will no longer codify that material. Instead, that material will be available as Public Guidance Documents, as defined in this rule. Although not codified, Public Guidance Documents have been or will be published in the Federal Register and any amendments to the documents will be published in the Federal Register, as well. In addition, the rule specifies that these documents are available from HUD at the address provided. The appendices being removed from codification are as follows:

- Appendix G—consisting of: (1) Appendix G–1 entitled ''Initial Escrow Account Disclosure Statement—Format,'' published at 60 FR 24736 (May 9, 1995); and (2) Appendix G–2 entitled ''Initial Escrow Account Disclosure Statement—Example,'' published at 60 FR 8819 (Feb. 15, 1995), but amended at 60 FR 24735 (May 9, 1995).
- Appendix H—consisting of Appendix H–1 and Appendix H–2, each entitled ''Biweekly Payments—Example,'' published at 60 FR 8820–8821 (Feb. 15, 1995).
- Appendix I—consisting of: (1) Appendices I–1, I–2, I–5, and I–6, each entitled ''Annual Escrow Account Disclosure Statement—Format,'' published at 60 FR 24737–24740 (May 9, 1995); and (2) Appendices I–3, I–4, I–7, and I–8, each entitled ''Annual Escrow Account Disclosure Statement—Example,'' published at 60 FR 8824, 8825, 8828, and 8829 (Feb. 15, 1995).
- Appendix J—consisting of Appendices J–1 and J–2, each entitled ''Annual Escrow Account Disclosure Statement—Example,'' published at 60 FR 8830–8831 (Feb. 15, 1995).
- Appendix K—consisting of Appendices K–1 through K–4, each entitled ''Short Year Statements—Example,'' published at 60 FR 8832–8835 (Feb. 15, 1995).
- Appendix L—''Side-by-Side Presentation of Old Projection and History,'' published at 60 FR 8836 (Feb. 15, 1995).
- Appendix M—''Illustration of Option of Identifying Simultaneous Deficiency and Shortage,'' published at 60 FR 8837 (Feb. 15, 1995).
- Appendix N—''HUD–1 Aggregate Accounting Adjustment Example,'' published at 60 FR 8838 (Feb. 15, 1995).

Aside from having been published previously in the Federal Register as indicated above, these appendices were also published in the 1995 edition of the CFR (though after publication of the 1995 edition further revisions to Appendices G and I were made at 60 FR 24735–24740 (May 9, 1995)). While the guidance in these appendices remains applicable and the examples and explanations are very helpful to users, it is not necessary that it be published in the CFR. HUD will more appropriately provide this information through other public guidance materials rather than maintain it in the CFR. HUD may update this information from time to time by publication in the Federal Register. The information is also available from HUD at the address indicated in 24 CFR 3500.3.

The investigation provisions formerly at § 3500.20 previously were removed from this Part and consolidated in a new part 3800 with similar provisions for manufactured housing (part 3282) and interstate land sales (part 1720) (see FR–4026, a reinvention rule published shortly before this rule).

Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment. This rule removes unnecessary regulatory provisions and nonbinding guidance material and corrects minor, nonsubstantive editorial errors in the

text of the current regulations. Because of the nature of the changes, prior public comment is unnecessary.

Other Matters

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely streamlines regulations by removing unnecessary provisions. The rule will have no adverse or disproportionate economic impact on small businesses.

Environmental Impact

This rulemaking does not have an environmental impact. This rulemaking simply amends an existing regulation by consolidating and streamlining provisions and does not alter the environmental effect of the regulations being amended. Findings of No Significant Impact with respect to the environment were made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of regulations implementing RESPA. Those findings remain applicable to this rule, and are 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 General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule will not have the potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule.

List of Subjects in 24 CFR Part 3500

Consumer protection, Condominiums, Housing, Mortgages, Mortgage servicing, Reporting and recordkeeping requirements.

Accordingly, part 3500 of title 24 of the Code of Federal Regulations is amended as follows:

PART 3500—REAL ESTATE SETTLEMENT PROCEDURES ACT

1. The authority citation for part 3500 continues to read as follows:

Authority: 12 U.S.C. 2601 *et seq.*; 42 U.S.C. 3535(d).

2. Sections 3500.1 through 3500.19 and 3500.21 are revised to read as follows:

§ 3500.1 Designation.

This part may be referred to as Regulation X.

§ 3500.2 Definitions.

(a) *Statutory terms.* All terms defined in RESPA (12 U.S.C. 2602) are used in accordance with their statutory meaning unless otherwise defined in paragraph (b) of this section or elsewhere in this part.

(b) *Other terms.* As used in this part:

Application means the submission of a borrower's financial information in anticipation of a credit decision, whether written or computer-generated, relating to a federally related mortgage loan. If the submission does not state or identify a specific property, the submission is an application for a pre-qualification and not an application for a federally related mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a federally related mortgage loan.

Business day means a day on which the offices of the business entity are open to the public for carrying on substantially all of the entity's business functions.

Dealer means, in the case of property improvement loans, a seller, contractor, or supplier of goods or services. In the case of manufactured home loans, ''dealer'' means one who engages in the business of manufactured home retail sales.

Dealer loan or dealer consumer credit contract means, generally, any arrangement in which a dealer assists the borrower in obtaining a federally related mortgage loan from the funding lender and then assigns the dealer's legal interests to the funding lender and receives the net proceeds of the loan. The funding lender is the lender for the purposes of the disclosure requirements of this part. If a dealer is a ''creditor'' as defined under the definition of ''federally related mortgage loan'' in this part, the dealer is the lender for purposes of this part.

Effective date of transfer is defined in section 6(i)(1) of RESPA (12 U.S.C. 2605(i)(1)). In the case of a home equity conversion mortgage or reverse mortgage as referenced in this section, the effective date of transfer is the transfer date agreed upon by the transferee servicer and the transferor servicer.

Federally related mortgage loan, also referred to in this rule as a ''mortgage loan,'' is defined in section 3(1) of RESPA (12 U.S.C. 2602(1)). If the residential property securing a mortgage loan is not located in a State, it is not a federally related mortgage loan. A federally related mortgage loan also includes:

(1) Any loan (other than temporary financing such as a construction loan) which meets the requirements in section 3(1)(A) of RESPA (12 U.S.C. 2602(1)(A)) and which is either:

(i) Originated by a dealer or, if the obligation is to be assigned to any maker of mortgage loans specified in section 3(1)(B)(i)–(iv) of RESPA (12 U.S.C. 2602(1)(B)(i)–(iv), by a mortgage broker; or

(ii) The subject of a home equity conversion mortgage, also frequently called a ''reverse mortgage,'' issued by any maker of mortgage loans specified in section 3(1)(B)(i)–(iv) of RESPA (12 U.S.C. 2602(1)(B)(i)–(iv)).

(2) Any installment sales contract, land contract, or contract for deed on otherwise qualifying residential property is a federally related mortgage loan if the contract is funded in whole or in part by proceeds of a loan made by any maker of mortgage loans specified in section 3(1)(B)(i)–(iv) of RESPA (12 U.S.C. 2602(1)(B)(i)–(iv)).

Good faith estimate means an estimate, prepared in accordance with section 5 of RESPA (12 U.S.C. 2604), of charges that a borrower is likely to incur in connection with a settlement.

HUD–1 or HUD–1A settlement statement (also *HUD–1 or HUD–1A*) means the statement that is prescribed by the Secretary in this part for setting forth settlement charges in connection with either the purchase or the refinancing (or other subordinate lien transaction) of 1- to 4-family residential property.

Lender means, generally, the secured creditor or creditors named in the debt obligation and document creating the lien. For loans originated by a mortgage broker that closes a federally related mortgage loan in its own name in a table funding transaction, the lender is the person to whom the obligation is initially assigned at or after settlement. A lender, in connection with dealer loans, is the lender to whom the loan is assigned, unless the dealer meets the definition of creditor as defined under ''federally related mortgage loan'' in this section. See also § 3500.5(b)(7), secondary market transactions.

Manufactured home is defined in § 3280.2 of this title.

Mortgage broker means a person (not an employee or exclusive agent of a lender) who brings a borrower and lender together to obtain a federally related mortgage loan, and who renders services as described in the definition of ''settlement services'' in this section. A loan correspondent meeting the requirements of the Federal Housing Administration under § 202.2(b) or § 202.15(a) of this title is a mortgage broker for purposes of this part.

Mortgaged property means the real property that is security for the federally related mortgage loan.

Person is defined in section 3(5) of RESPA (12 U.S.C. 2602(5)).

Public Guidance Documents means documents that HUD has published in the Federal Register, and that it may amend from time-to-time by publication in the Federal Register. These documents are also available from HUD at the address indicated in 24 CFR 3500.3.

Refinancing means a transaction in which an existing obligation that was subject to a secured lien on residential real property is satisfied and replaced by a new obligation undertaken by the same borrower and with the same or a new lender. The following shall not be treated as a refinancing, even when the existing obligation is satisfied and replaced by a new obligation with the same lender (this definition of ''refinancing'' as to transactions with the same lender is similar to Regulation Z, 12 CFR 226.20(a)):

(1) A renewal of a single payment obligation with no change in the original terms;

(2) A reduction in the annual percentage rate as computed under the Truth in Lending Act with a corresponding change in the payment schedule;

(3) An agreement involving a court proceeding;

(4) A workout agreement, in which a change in the payment schedule or change in collateral requirements is agreed to as a result of the consumer's default or delinquency, unless the rate is increased or the new amount financed exceeds the unpaid balance plus earned finance charges and premiums for continuation of allowable insurance; and

(5) The renewal of optional insurance purchased by the consumer that is added to an existing transaction, if disclosures relating to the initial purchase were provided.

Regulation Z means the regulations issued by the Board of Governors of the Federal Reserve System (12 CFR part 226) to implement the Federal Truth in Lending Act (15 U.S.C. 1601 *et seq.*), and includes the Commentary on Regulation Z.

Required use means a situation in which a person must use a particular provider of a settlement service in order to have access to some distinct service or property, and the person will pay for the settlement service of the particular provider or will pay a charge attributable, in whole or in part, to the settlement service. However, the offering of a package (or combination of settlement services) or the offering of discounts or rebates to consumers for the purchase of multiple settlement services does not constitute a required use. Any package or discount must be optional to the purchaser. The discount must be a true discount below the prices that are otherwise generally available, and must not be made up by higher costs elsewhere in the settlement process.

RESPA means the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601 *et seq.*

Servicer means the person responsible for the servicing of a mortgage loan (including the person who makes or holds a mortgage loan if such person also services the mortgage loan). The term does not include:

(1) The Federal Deposit Insurance Corporation (FDIC) or the Resolution Trust Corporation (RTC), in connection with assets acquired, assigned, sold, or transferred pursuant to section 13(c) of the Federal Deposit Insurance Act or as receiver or conservator of an insured depository institution; and

(2) The Federal National Mortgage Corporation (FNMA); the Federal Home Loan Mortgage Corporation (Freddie Mac); the RTC; the FDIC; HUD, including the Government National Mortgage Association (GNMA) and the Federal Housing Administration (FHA) (including cases in which a mortgage insured under the National Housing Act (12 U.S.C. 1701 *et seq.*) is assigned to HUD); the National Credit Union Administration (NCUA); the Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA); and the Department of Veterans Affairs (VA), in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by termination of the contract for servicing the loan for cause, commencement of proceedings for bankruptcy of the servicer, or commencement of proceedings by the FDIC or RTC for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

Servicing means receiving any scheduled periodic payments from a borrower pursuant to the terms of any mortgage loan, including amounts for escrow accounts under section 10 of RESPA (12 U.S.C. 2609), and making the payments to the owner of the loan or other third parties of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the mortgage servicing loan documents or servicing contract. In the case of a home equity conversion mortgage or reverse mortgage as referenced in this section, servicing includes making payments to the borrower.

Settlement means the process of executing legally binding documents regarding a lien on property that is subject to a federally related mortgage loan. This process may also be called ''closing'' or ''escrow'' in different jurisdictions.

Settlement service means any service provided in connection with a prospective or actual settlement, including, but not limited to, any one or more of the following:

(1) Origination of a federally related mortgage loan (including, but not limited to, the taking of loan applications, loan processing, and the underwriting and funding of such loans);

(2) Rendering of services by a mortgage broker (including counseling, taking of applications, obtaining verifications and appraisals, and other loan processing and origination services, and communicating with the borrower and lender);

(3) Provision of any services related to the origination, processing or funding of a federally related mortgage loan;

(4) Provision of title services, including title searches, title examinations, abstract preparation, insurability determinations, and the issuance of title commitments and title insurance policies;

(5) Rendering of services by an attorney;

(6) Preparation of documents, including notarization, delivery, and recordation;

(7) Rendering of credit reports and appraisals;

(8) Rendering of inspections, including inspections required by applicable law or any inspections required by the sales contract or mortgage documents prior to transfer of title;

(9) Conducting of settlement by a settlement agent and any related services;

(10) Provision of services involving mortgage insurance;

(11) Provision of services involving hazard, flood, or other casualty insurance or homeowner's warranties;

(12) Provision of services involving mortgage life, disability, or similar insurance designed to pay a mortgage loan upon disability or death of a borrower, but only if such insurance is required by the lender as a condition of the loan;

(13) Provision of services involving real property taxes or any other assessments or charges on the real property;

(14) Rendering of services by a real estate agent or real estate broker; and

(15) Provision of any other services for which a settlement service provider requires a borrower or seller to pay.

Special information booklet means the booklet prepared by the Secretary pursuant to section 5 of RESPA (12 U.S.C. 2604) to help persons understand the nature and costs of settlement services. The Secretary publishes the form of the special information booklet in the Federal Register. The Secretary may issue or approve additional booklets or alternative booklets by publication of a Notice in the Federal Register.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

Table funding means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds. A table-funded transaction is not a secondary market transaction (see § 3500.5(b)(7)).

Title company means any institution, or its duly authorized agent, that is qualified to issue title insurance.

§ 3500.3 Questions or suggestions from public and copies of public guidance documents.

Any questions or suggestions from the public regarding RESPA, or requests for copies of HUD Public Guidance Documents, should be directed to the Director, Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410–8000, rather than to HUD field offices. Legal questions may be directed to the Assistant General Counsel, GSE/RESPA Division, at this address.

§ 3500.4 Reliance upon rule, regulation or interpretation by HUD.

(a) *Rule, regulation or interpretation.*—(1) For purposes of sections 19 (a) and (b) of RESPA (12 U.S.C. 2617 (a) and (b)) only the following constitute a rule, regulation or interpretation of the Secretary:

(i) All provisions, including appendices, of this part. Any other document referred to in this part is not incorporated in this part unless it is specifically set out in this part;

(ii) Any other document that is published in the Federal Register by the Secretary and states that it is an ''interpretation,'' ''interpretive rule,'' ''commentary,'' or a ''statement of policy'' for purposes of section 19(a) of RESPA. Such documents will be prepared by HUD staff and counsel. Such documents may be revoked or amended by a subsequent document published in the Federal Register by the Secretary.

(2) A ''rule, regulation, or interpretation thereof by the Secretary'' for purposes of section 19(b) of RESPA (12 U.S.C. 2617(b)) shall not include the special information booklet prescribed by the Secretary or any other statement or issuance, whether oral or written, by an officer or representative of the Department of Housing and Urban Development (HUD), letter or memorandum by the Secretary, General Counsel, any Assistant Secretary or other officer or employee of HUD, preamble to a regulation or other issuance of HUD, Public Guidance Document, report to Congress, pleading, affidavit or other document in litigation, pamphlet, handbook, guide, telegraphic communication, explanation, instructions to forms, speech or other material of any nature which is not specifically included in paragraph (a)(1) of this section.

(b) *Unofficial interpretations; staff discretion.* In response to requests for interpretation of matters not adequately covered by this part or by an official interpretation issued under paragraph (a)(1)(ii) of this section, unofficial staff interpretations may be provided at the discretion of HUD staff or counsel. Written requests for such interpretations should be directed to the address indicated in § 3500.3. Such interpretations provide no protection under section 19(b) of RESPA (12 U.S.C. 2617(b)). Ordinarily, staff or counsel will not issue unofficial interpretations on matters adequately covered by this Part or by official interpretations or commentaries issued under paragraph (a)(1)(ii) of this section.

(c) All informal counsel's opinions and staff interpretations issued before November 2, 1992, were withdrawn as of that date. Courts and administrative agencies, however, may use previous opinions to determine the validity of conduct under the previous Regulation X.

§ 3500.5 Coverage of RESPA.

(a) *Applicability.* RESPA and this part apply to all federally related mortgage loans, except for the exemptions provided in paragraph (b) of this section.

(b) *Exemptions.* (1) A loan on property of 25 acres or more.

(2) *Business purpose loans.* An extension of credit primarily for a business, commercial, or agricultural purpose. The definition of such an extension of credit for purposes of this exemption generally parallels Regulation Z, 12 CFR 226.3(a)(1), and persons may rely on Regulation Z in determining whether the exemption applies. Notwithstanding the foregoing, the exemption in this section for business purpose loans does not include any loan to one or more persons acting in an individual capacity (natural persons) to acquire, refinance, improve, or maintain 1- to 4-family residential property used, or to be used, to rent to other persons. An individual who voluntarily chooses to act as a sole proprietorship is not considered to be acting in an individual capacity for purposes of this part.

(3) *Temporary financing.* Temporary financing, such as a construction loan. The exemption for temporary financing does not apply to a loan made to finance construction of 1- to 4-family residential property if the loan is used as, or may be converted to, permanent financing by the same lender or is used to finance transfer of title to the first user. If a lender issues a commitment for permanent financing, with or without conditions, the loan is covered by this part. Any construction loan for new or rehabilitated 1- to 4-family residential property, other than a loan to a *bona fide* builder (a person who regularly constructs 1- to 4-family residential structures for sale or lease), is subject to this part if its term is for two years or more. A ''bridge loan'' or ''swing loan'' in which a lender takes a security

interest in otherwise covered 1- to 4-family residential property is not covered by RESPA and this part.

(4) *Vacant land.* Any loan secured by vacant or unimproved property, unless within two years from the date of the settlement of the loan, a structure or a manufactured home will be constructed or placed on the real property using the loan proceeds. If a loan for a structure or manufactured home to be placed on vacant or unimproved property will be secured by a lien on that property, the transaction is covered by this part.

(5) *Assumption without lender approval.* Any assumption in which the lender does not have the right expressly to approve a subsequent person as the borrower on an existing federally related mortgage loan. Any assumption in which the lender's permission is both required and obtained is covered by RESPA and this part, whether or not the lender charges a fee for the assumption.

(6) *Loan conversions.* Any conversion of a federally related mortgage loan to different terms that are consistent with provisions of the original mortgage instrument, as long as a new note is not required, even if the lender charges an additional fee for the conversion.

(7) *Secondary market transactions.* A *bona fide* transfer of a loan obligation in the secondary market is not covered by RESPA and this part, except as set forth in section 6 of RESPA (12 U.S.C. 2605) and § 3500.21. In determining what constitutes a *bona fide* transfer, HUD will consider the real source of funding and the real interest of the funding lender. Mortgage broker transactions that are table-funded are not secondary market transactions. Neither the creation of a dealer loan or dealer consumer credit contract, nor the first assignment of such loan or contract to a lender, is a secondary market transaction (see § 3500.2.)

§ 3500.6 Special information booklet at time of loan application.

(a) *Lender to provide special information booklet.* Subject to the exceptions set forth in this paragraph, the lender shall provide a copy of the special information booklet to a person from whom the lender receives, or for whom the lender prepares, a written application for a federally related mortgage loan. When two or more persons apply together for a loan, the lender is in compliance if the lender provides a copy of the booklet to one of the persons applying.

(1) The lender shall provide the special information booklet by delivering it or placing it in the mail to the applicant not later than three business days (as that term is defined in § 3500.2) after the application is received or prepared. However, if the lender denies the borrower's application for credit before the end of the three-business-day period, then the lender need not provide the booklet to the borrower. If a borrower uses a mortgage broker, the mortgage broker shall distribute the special information booklet and the lender need not do so. The intent of this provision is that the applicant receive the special information booklet at the earliest possible date.

(2) In the case of a federally related mortgage loan involving an open-ended credit plan, as defined in § 226.2(a)(20) of Regulation Z (12 CFR), a lender or mortgage broker that provides the borrower with a copy of the brochure entitled ''When Your Home is On the Line: What You Should Know About Home Equity Lines of Credit'', or any successor brochure issued by the Board of Governors of the Federal Reserve System, is deemed to be in compliance with this section.

(3) In the categories of transactions set forth at the end of this paragraph, the lender or mortgage broker does not have to provide the booklet to the borrower. Under the authority of section 19(a) of RESPA (12 U.S.C. 2617(a)), the Secretary may issue a revised or separate special information booklet that deals with these transactions, or the Secretary may chose to endorse the forms or booklets of other Federal agencies. In such an event, the requirements for delivery by lenders and the availability of the booklet or alternate materials for these transactions will be set forth in a Notice in the Federal Register. This paragraph shall apply to the following transactions:

(i) Refinancing transactions;

(ii) Closed-end loans, as defined in 12 CFR 226.2(a)(10) of Regulation Z, when the lender takes a subordinate lien;

(iii) Reverse mortgages; and

(iv) Any other federally related mortgage loan whose purpose is not the purchase of a 1- to 4-family residential property.

(b) *Revision.* The Secretary may from time to time revise the special information booklet by publishing a notice in the Federal Register.

(c) *Reproduction.* The special information booklet may be reproduced in any form, provided that no change is made other than as provided under paragraph (d) of this section. The special information booklet may not be made a part of a larger document for purposes of distribution under RESPA and this section. Any color, size and quality of paper, type of print, and method of reproduction may be used so long as the booklet is clearly legible.

(d) *Permissible changes.* (1) No changes to, deletions from, or additions to the special information booklet currently prescribed by the Secretary shall be made other than those specified in this paragraph (d) or any others approved in writing by the Secretary. A request to the Secretary for approval of any changes shall be submitted in writing to the address indicated in § 3500.3, stating the reasons why the applicant believes such changes, deletions or additions are necessary.

(2) The cover of the booklet may be in any form and may contain any drawings, pictures or artwork, provided that the words ''settlement costs'' are used in the title. Names, addresses and telephone numbers of the lender or others and similar information may appear on the cover, but no discussion of the matters covered in the booklet shall appear on the cover.

(3) The special information booklet may be translated into languages other than English.

§ 3500.7 Good faith estimate.

(a) *Lender to provide.* Except as provided in this paragraph (a) or paragraph (f) of this section, the lender shall provide all applicants for a federally related mortgage loan with a good faith estimate of the amount of or range of charges for the specific settlement services the borrower is likely to incur in connection with the settlement. The lender shall provide the good faith estimate required under this section (a suggested format is set forth in Appendix C of this part) either by delivering the good faith estimate or by placing it in the mail to the loan applicant, not later than three business days after the application is received or prepared.

(1) If the lender denies the application for a federally related mortgage loan before the end of the three-business-day period, the lender need not provide the denied borrower with a good faith estimate.

(2) For ''no cost'' or ''no point'' loans, the charges to be shown on the good faith estimate include any payments to be made to affiliated or independent settlement service providers. These payments should be shown as P.O.C. (Paid Outside of Closing) on the Good Faith Estimate and the HUD–1 or HUD–1A.

(3) In the case of dealer loans, the lender is responsible for provision of the good faith estimate, either directly or by the dealer.

(4) If a mortgage broker is the exclusive agent of the lender, either the

lender or the mortgage broker shall provide the good faith estimate within three business days after the mortgage broker receives or prepares the application.

(b) *Mortgage broker to provide.* In the event an application is received by a mortgage broker who is not an exclusive agent of the lender, the mortgage broker must provide a good faith estimate within three days of receiving a loan application based on his or her knowledge of the range of costs (a suggested format is set forth in Appendix C of this part). As long as the mortgage broker has provided the good faith estimate, the funding lender is not required to provide an additional good faith estimate, but the funding lender is responsible for ascertaining that the good faith estimate has been delivered. If the application for mortgage credit is denied before the end of the three-business-day period, the mortgage broker need not provide the denied borrower with a good faith estimate.

(c) *Content of good faith estimate.* A good faith estimate consists of an estimate, as a dollar amount or range, of each charge which:

(1) Will be listed in section L of the HUD–1 or HUD–1A in accordance with the instructions set forth in Appendix A to this part; and

(2) That the borrower will normally pay or incur at or before settlement based upon common practice in the locality of the mortgaged property. Each such estimate must be made in good faith and bear a reasonable relationship to the charge a borrower is likely to be required to pay at settlement, and must be based upon experience in the locality of the mortgaged property. As to each charge with respect to which the lender requires a particular settlement service provider to be used, the lender shall make its estimate based upon the lender's knowledge of the amounts charged by such provider.

(d) *Form of good faith estimate.* A suggested good faith estimate form is set forth in Appendix C to this part and is in compliance with the requirements of the Act except for any additional requirements of paragraph (e) of this section. The good faith estimate may be provided together with disclosures required by the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, so long as all required material for the good faith estimate is grouped together. The lender may include additional relevant information, such as the name/signature of the applicant and loan officer, date, and information identifying the loan application and property, as long as the form remains clear and concise and the additional information is not more prominent than the required material.

(e) *Particular providers required by lender.* (1) If the lender requires the use (see § 3500.2, ''required use'') of a particular provider of a settlement service, other than the lender's own employees, and also requires the borrower to pay any portion of the cost of such service, then the good faith estimate must:

(i) Clearly state that use of the particular provider is required and that the estimate is based on the charges of the designated provider;

(ii) Give the name, address, and telephone number of each provider; and

(iii) Describe the nature of any relationship between each such provider and the lender. Plain English references to the relationship should be utilized, e.g., ''X is a depositor of the lender,'' ''X is a borrower from the lender,'' ''X has performed 60% of the lender's settlements in the past year.'' (The lender is not required to keep detailed records of the percentages of use. Similar language, such as ''X was used [regularly] [frequently] in our settlements the past year'' is also sufficient for the purposes of this paragraph.) In the event that more than one relationship exists, each should be disclosed.

(2) For purposes of paragraph (e)(1) of this section, a ''relationship'' exists if:

(i) The provider is an associate of the lender, as that term is defined in 12 U.S.C. 2602(8);

(ii) Within the last 12 months, the provider has maintained an account with the lender or had an outstanding loan or credit arrangement with the lender; or

(iii) The lender has repeatedly used or required borrowers to use the services of the provider within the last 12 months.

(3) Except for a provider that is the lender's chosen attorney, credit reporting agency, or appraiser, if the lender is in a controlled business relationship (see § 3500.15) with a provider, the lender may not require the use of that provider.

(4) If the lender maintains a controlled list of required providers (five or more for each discrete service) or relies on a list maintained by others, and at the time of application the lender has not yet decided which provider will be selected from that list, then the lender may satisfy the requirements of this section if the lender:

(i) Provides the borrower with a written statement that the lender will require a particular provider from a lender-controlled or -approved list; and

(ii) Provides the borrower in the Good Faith Estimate the range of costs for the required provider(s), and provides the name of the specific provider and the actual cost on the HUD–1 or HUD–1A.

(f) *Open-end lines of credit (home-equity plans) under Truth in Lending Act.* In the case of a federally related mortgage loan involving an open-end line of credit (home-equity plan) covered under the Truth in Lending Act and Regulation Z, a lender or mortgage broker that provides the borrower with the disclosures required by 12 CFR 226.5b of Regulation Z at the time the borrower applies for such loan shall be deemed to satisfy the requirements of this section.

(Approved by the Office of Management and Budget under control number 2502–0265)

§ 3500.8 Use of HUD–1 or HUD–1A settlement statements.

(a) *Use by settlement agent.* The settlement agent shall use the HUD–1 settlement statement in every settlement involving a federally related mortgage loan in which there is a borrower and a seller. For transactions in which there is a borrower and no seller, such as refinancing loans or subordinate lien loans, the HUD–1 may be utilized by using the borrower's side of the HUD–1 statement. Alternatively, the form HUD–1A may be used for these transactions. Either the HUD–1 or the HUD–1A, as appropriate, shall be used for every RESPA-covered transaction, unless its use is specifically exempted, but the HUD–1 or HUD–1A may be modified as permitted under this part. The use of the HUD–1 or HUD–1A is exempted for open-end lines of credit (home-equity plans) covered by the Truth in Lending Act and Regulation Z.

(b) *Charges to be stated.* The settlement agent shall complete the HUD–1 or HUD–1A in accordance with the instructions set forth in Appendix A to this part.

(c) *Aggregate Accounting At Settlement.* (1) After itemizing individual deposits in the 1000 series using single-item accounting, the servicer shall make an adjustment based on aggregate accounting. This adjustment equals the difference in the deposit required under aggregate accounting and the sum of the deposits required under single-item accounting. The computation steps for both accounting methods are set out in § 3500.17(d). The adjustment will always be a negative number or zero (–0–). The settlement agent shall enter the aggregate adjustment amount on a final line in the 1000 series of the HUD–1 or HUD–1A statement.

(2) During the phase-in period, as defined in § 3500.17(b), an alternative procedure is available. The settlement

agent may initially calculate the 1000 series deposits for the HUD–1 and HUD–1A settlement statement using single-item analysis with only a one-month cushion (unless the mortgage loan documents indicate a smaller amount). In the escrow account analysis conducted within 45 days of settlement, however, the servicer shall adjust the escrow account to reflect the aggregate accounting balance. Appendix F to this part sets out examples of aggregate analysis. Appendix A to this part contains instructions for completing the HUD–1 or HUD–1A settlement statements using an aggregate analysis adjustment and the alternative process during the phase-in period.

(Approved by the Office of Management and Budget under control numbers 2502–0265 and 2502–0491)

§ 3500.9 Reproduction of settlement statements.

(a) *Permissible changes—HUD–1.* The following changes and insertions are permitted when the HUD–1 settlement statement is reproduced:

(1) The person reproducing the HUD–1 may insert its business name and logotype in Section A and may rearrange, but not delete, the other information that appears in Section A.

(2) The name, address, and other information regarding the lender and settlement agent may be printed in Sections F and H, respectively.

(3) Reproduction of the HUD–1 must conform to the terminology, sequence, and numbering of line items as presented in lines 100–1400. However, blank lines or items listed in lines 100–1400 that are not used locally or in connection with mortgages by the lender may be deleted, except for the following: Lines 100, 120, 200, 220, 300, 301, 302, 303, 400, 420, 500, 520, 600, 601, 602, 603, 700, 800, 900, 1000, 1100, 1200, 1300, and 1400. The form may be shortened correspondingly. The number of a deleted item shall not be used for a substitute or new item, but the number of a blank space on the HUD–1 may be used for a substitute or new item.

(4) Charges not listed on the HUD–1, but that are customary locally or pursuant to the lender's practice, may be inserted in blank spaces. Where existing blank spaces on the HUD–1 are insufficient, additional lines and spaces may be added and numbered in sequence with spaces on the HUD–1.

(5) The following variations in layout and format are within the discretion of persons reproducing the HUD–1 and do not require prior HUD approval: size of pages; tint or color of pages; size and style of type or print; vertical spacing between lines or provision for additional horizontal space on lines (for example, to provide sufficient space for recording time periods used in prorations); printing of the HUD–1 contents on separate pages, on the front and back of a single page, or on one continuous page; use of multicopy tear-out sets; printing on rolls for computer purposes; reorganization of Sections B through I, when necessary to accommodate computer printing; and manner of placement of the HUD number, but not the OMB approval number, neither of which may be deleted. The designation of the expiration date of the OMB number may be deleted. Any changes in the HUD number or OMB approval number may be announced by notice in the Federal Register, rather than by amendment of this part.

(6) The borrower's information and the seller's information may be provided on separate pages.

(7) Signature lines may be added.

(8) The HUD–1 may be translated into languages other than English.

(9) An additional page may be attached to the HUD–1 for the purpose of including customary recitals and information used locally in real estate settlements; for example, breakdown of payoff figures, a breakdown of the borrower's total monthly mortgage payments, check disbursements, a statement indicating receipt of funds, applicable special stipulations between buyer and seller, and the date funds are transferred. If space permits, such information may be added at the end of the HUD–1.

(10) As required by HUD/FHA in FHA-insured loans.

(11) As allowed by § 3500.17, relating to an initial escrow account statement.

(b) *Permissible changes—HUD–1A.* The changes and insertions on the HUD–1 permitted under paragraph (a) of this section are also permitted when the HUD–1A settlement statement is reproduced, except the changes described in paragraphs (a) (3) and (6) of this section.

(c) *Written approval.* Any other deviation in the HUD–1 or HUD–1A forms is permissible only upon receipt of written approval of the Secretary. A request to the Secretary for approval shall be submitted in writing to the address indicated in § 3500.3 and shall state the reasons why the applicant believes such deviation is needed. The prescribed form(s) must be used until approval is received.

(Approved by the Office of Management and Budget under control numbers 2502–0265 and 2502–0491)

§ 3500.10 One-day advance inspection of HUD–1 or HUD–1A settlement statement; delivery; recordkeeping.

(a) *Inspection one day prior to settlement upon request by the borrower.* The settlement agent shall permit the borrower to inspect the HUD–1 or HUD–1A settlement statement, completed to set forth those items that are known to the settlement agent at the time of inspection, during the business day immediately preceding settlement. Items related only to the seller's transaction may be omitted from the HUD–1.

(b) *Delivery.* The settlement agent shall provide a completed HUD–1 or HUD–1A to the borrower, the seller (if there is one), the lender (if the lender is not the settlement agent), and/or their agents. When the borrower's and seller's copies of the HUD–1 or HUD–1A differ as permitted by the instructions in Appendix A to this part, both copies shall be provided to the lender (if the lender is not the settlement agent). The settlement agent shall deliver the completed HUD–1 or HUD–1A at or before the settlement, except as provided in paragraphs (c) and (d) of this section.

(c) *Waiver.* The borrower may waive the right to delivery of the completed HUD–1 or HUD–1A no later than at settlement by executing a written waiver at or before settlement. In such case, the completed HUD–1 or HUD–1A shall be mailed or delivered to the borrower, seller, and lender (if the lender is not the settlement agent) as soon as practicable after settlement.

(d) *Exempt transactions.* When the borrower or the borrower's agent does not attend the settlement, or when the settlement agent does not conduct a meeting of the parties for that purpose, the transaction shall be exempt from the requirements of paragraphs (a) and (b) of this section, except that the HUD–1 or HUD–1A shall be mailed or delivered as soon as practicable after settlement.

(e) *Recordkeeping.* The lender shall retain each completed HUD–1 or HUD–1A and related documents for five years after settlement, unless the lender disposes of its interest in the mortgage and does not service the mortgage. In that case, the lender shall provide its copy of the HUD–1 or HUD–1A to the owner or servicer of the mortgage as a part of the transfer of the loan file. Such owner or servicer shall retain the HUD–1 or HUD–1A for the remainder of the five-year period. The Secretary shall have the right to inspect or require copies of records covered by this paragraph (e).

(Approved by the Office of Management and Budget under control number 2502–0265)

§ 3500.11 Mailing.

The provisions of this part requiring or permitting mailing of documents shall be deemed to be satisfied by placing the document in the mail (whether or not received by the addressee) addressed to the addresses stated in the loan application or in other information submitted to or obtained by the lender at the time of loan application or submitted or obtained by the lender or settlement agent, except that a revised address shall be used where the lender or settlement agent has been expressly informed in writing of a change in address.

§ 3500.12 No fee.

No fee shall be imposed or charge made upon any other person, as a part of settlement costs or otherwise, by a lender in connection with a federally related mortgage loan made by it (or a loan for the purchase of a manufactured home), or by a servicer (as that term is defined under 12 U.S.C. 2605(i)(2)) for or on account of the preparation and distribution of the HUD–1 or HUD–1A settlement statement, escrow account statements required pursuant to section 10 of RESPA (12 U.S.C. 2609), or statements required by the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*

§ 3500.13 Relation to State laws.

(a) State laws that are inconsistent with RESPA or this part are preempted to the extent of the inconsistency. However, RESPA and these regulations do not annul, alter, affect, or exempt any person subject to their provisions from complying with the laws of any State with respect to settlement practices, except to the extent of the inconsistency.

(b) Upon request by any person, the Secretary is authorized to determine if inconsistencies with State law exist; in doing so, the Secretary shall consult with appropriate Federal agencies.

(1) The Secretary may not determine that a State law or regulation is inconsistent with any provision of RESPA or this part, if the Secretary determines that such law or regulation gives greater protection to the consumer.

(2) In determining whether provisions of State law or regulations concerning controlled business arrangements are inconsistent with RESPA or this part, the Secretary may not construe those provisions that impose more stringent limitations on controlled business arrangements as inconsistent with RESPA so long as they give more protection to consumers and/or competition.

(c) Any person may request the Secretary to determine whether an inconsistency exists by submitting to the address indicated in § 3500.3, a copy of the State law in question, any other law or judicial or administrative opinion that implements, interprets or applies the relevant provision, and an explanation of the possible inconsistency. A determination by the Secretary that an inconsistency with State law exists will be made by publication of a notice in the Federal Register. ''Law'' as used in this section includes regulations and any enactment which has the force and effect of law and is issued by a State or any political subdivision of a State.

(d) A specific preemption of conflicting State laws regarding notices and disclosures of mortgage servicing transfers is set forth in § 3500.21(h).

§ 3500.14 Prohibition against kickbacks and unearned fees.

(a) *Section 8 violation.* Any violation of this section is a violation of section 8 of RESPA (12 U.S.C. 2607) and is subject to enforcement as such under § 3500.19.

(b) *No referral fees.* No person shall give and no person shall accept any fee, kickback or other thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or part of a settlement service involving a federally related mortgage loan shall be referred to any person. Any referral of a settlement service is not a compensable service, except as set forth in § 3500.14(g)(1). A company may not pay any other company or the employees of any other company for the referral of settlement service business.

(c) *No split of charges except for actual services performed.* No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed. A charge by a person for which no or nominal services are performed or for which duplicative fees are charged is an unearned fee and violates this section. The source of the payment does not determine whether or not a service is compensable. Nor may the prohibitions of this Part be avoided by creating an arrangement wherein the purchaser of services splits the fee.

(d) *Thing of value.* This term is broadly defined in section 3(2) of RESPA (12 U.S.C. 2602(2)). It includes, without limitation, monies, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock, dividends, distributions of partnership profits, franchise royalties, credits representing monies that may be paid at a future date, the opportunity to participate in a money-making program, retained or increased earnings, increased equity in a parent or subsidiary entity, special bank deposits or accounts, special or unusual banking terms, services of all types at special or free rates, sales or rentals at special prices or rates, lease or rental payments based in whole or in part on the amount of business referred, trips and payment of another person's expenses, or reduction in credit against an existing obligation. The term ''payment'' is used throughout §§ 3500.14 and 3500.15 as synonymous with the giving or receiving any ''thing of value'' and does not require transfer of money.

(e) *Agreement or understanding.* An agreement or understanding for the referral of business incident to or part of a settlement service need not be written or verbalized but may be established by a practice, pattern or course of conduct. When a thing of value is received repeatedly and is connected in any way with the volume or value of the business referred, the receipt of the thing of value is evidence that it is made pursuant to an agreement or understanding for the referral of business.

(f) *Referral*—(1) A referral includes any oral or written action directed to a person which has the effect of affirmatively influencing the selection by any person of a provider of a settlement service or business incident to or part of a settlement service when such person will pay for such settlement service or business incident thereto or pay a charge attributable in whole or in part to such settlement service or business.

(2) A referral also occurs whenever a person paying for a settlement service or business incident thereto is required to use (see § 3500.2, ''required use'') a particular provider of a settlement service or business incident thereto.

(g) *Fees, salaries, compensation, or other payments.* (1) Section 8 of RESPA permits:

(i) A payment to an attorney at law for services actually rendered;

(ii) A payment by a title company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance;

(iii) A payment by a lender to its duly appointed agent or contractor for services actually performed in the origination, processing, or funding of a loan;

(iv) A payment to any person of a *bona fide* salary or compensation or other payment for goods or facilities

actually furnished or for services actually performed;

(v) A payment pursuant to cooperative brokerage and referral arrangements or agreements between real estate agents and real estate brokers. (The statutory exemption restated in this paragraph refers only to fee divisions within real estate brokerage arrangements when all parties are acting in a real estate brokerage capacity, and has no applicability to any fee arrangements between real estate brokers and mortgage brokers or between mortgage brokers.);

(vi) Normal promotional and educational activities that are not conditioned on the referral of business and that do not involve the defraying of expenses that otherwise would be incurred by persons in a position to refer settlement services or business incident thereto;

(vii) An employer's payment to its own employees for any referral activities; or

(viii) Any payment by a borrower for computer loan origination services, so long as the disclosure set forth in Appendix E of this part is provided the borrower.

(2) The Department may investigate high prices to see if they are the result of a referral fee or a split of a fee. If the payment of a thing of value bears no reasonable relationship to the market value of the goods or services provided, then the excess is not for services or goods actually performed or provided. These facts may be used as evidence of a violation of section 8 and may serve as a basis for a RESPA investigation. High prices standing alone are not proof of a RESPA violation. The value of a referral (i.e., the value of any additional business obtained thereby) is not to be taken into account in determining whether the payment exceeds the reasonable value of such goods, facilities or services. The fact that the transfer of the thing of value does not result in an increase in any charge made by the person giving the thing of value is irrelevant in determining whether the act is prohibited.

(3) *Multiple services.* When a person in a position to refer settlement service business, such as an attorney, mortgage lender, real estate broker or agent, or developer or builder, receives a payment for providing additional settlement services as part of a real estate transaction, such payment must be for services that are actual, necessary and distinct from the primary services provided by such person. For example, for an attorney of the buyer or seller to receive compensation as a title agent, the attorney must perform core title agent services (for which liability arises) separate from attorney services, including the evaluation of the title search to determine the insurability of the title, the clearance of underwriting objections, the actual issuance of the policy or policies on behalf of the title insurance company, and, where customary, issuance of the title commitment, and the conducting of the title search and closing.

(h) *Recordkeeping.* Any documents provided pursuant to this section shall be retained for five (5) years from the date of execution.

(i) *Appendix B of this part.* Illustrations in Appendix B of this part demonstrate some of the requirements of this section.

§ 3500.15 Controlled business arrangements.

(a) *General.* A controlled business arrangement is defined in section 3(7) of RESPA (12 U.S.C. 2602(7)).

(b) *Violation and exemption.* A controlled business arrangement is not a violation of section 8 of RESPA (12 U.S.C. 2607) and of § 3500.14 if the conditions set forth in this section are satisfied.

(1) The person making each referral has provided to each person whose business is referred a written disclosure, in the format of the Controlled Business Arrangement Disclosure Statement set forth in Appendix D of this part, of the nature of the relationship (explaining the ownership and financial interest) between the provider of settlement services (or business incident thereto) and the person making the referral and of an estimated charge or range of charges generally made by such provider (which describes the charge using the same terminology, as far as practical, as section L of the HUD–1 settlement statement). The disclosures must be provided on a separate piece of paper no later than the time of each referral or, if the lender requires use of a particular provider, the time of loan application, except that:

(i) Where a lender makes the referral to a borrower, the condition contained in paragraph (b)(1) of this section may be satisfied at the time that the good faith estimate or a statement under § 3500.7(d) is provided; and

(ii) Whenever an attorney or law firm requires a client to use a particular title insurance agent, the attorney or law firm shall provide the disclosures no later than the time the attorney or law firm is engaged by the client. Failure to comply with the disclosure requirements of this section may be overcome if the person making a referral can prove by a preponderance of the evidence that procedures reasonably adopted to result in compliance with these conditions have been maintained and that any failure to comply with these conditions was unintentional and the result of a *bona fide* error. An error of legal judgment with respect to a person's obligations under RESPA is not a *bona fide* error. Administrative and judicial interpretations of section 130(c) of the Truth in Lending Act shall not be binding interpretations of the preceding sentence or section 8(d)(3) of RESPA (12 U.S.C. 2607(d)(3)).

(2) No person making a referral has required (as defined in § 3500.2, ''required use'') any person to use any particular provider of settlement services or business incident thereto, except if such person is a lender, for requiring a buyer, borrower or seller to pay for the services of an attorney, credit reporting agency, or real estate appraiser chosen by the lender to represent the lender's interest in a real estate transaction, or except if such person is an attorney or law firm for arranging for issuance of a title insurance policy for a client, directly as agent or through a separate corporate title insurance agency that may be operated as an adjunct to the law practice of the attorney or law firm, as part of representation of that client in a real estate transaction.

(3) The only thing of value that is received from the arrangement other than payments listed in § 3500.14(g) is a return on an ownership interest or franchise relationship.

(i) In a controlled business arrangement:

(A) *Bona fide* dividends, and capital or equity distributions, related to ownership interest or franchise relationship, between entities in an affiliate relationship, are permissible; and

(B) *Bona fide* business loans, advances, and capital or equity contributions between entities in an affiliate relationship (in any direction), are not prohibited—so long as they are for ordinary business purposes and are not fees for the referral of settlement service business or unearned fees.

(ii) A return on an ownership interest does not include:

(A) Any payment which has as a basis of calculation no apparent business motive other than distinguishing among recipients of payments on the basis of the amount of their actual, estimated or anticipated referrals;

(B) Any payment which varies according to the relative amount of referrals by the different recipients of similar payments; or

(C) A payment based on an ownership, partnership or joint venture share which has been adjusted on the basis of previous relative referrals by recipients of similar payments.

(iii) Neither the mere labelling of a thing of value, nor the fact that it may be calculated pursuant to a corporate or partnership organizational document or a franchise agreement, will determine whether it is a *bona fide* return on an ownership interest or franchise relationship. Whether a thing of value is such a return will be determined by analyzing facts and circumstances on a case by case basis.

(iv) A return on franchise relationship may be a payment to or from a franchisee but it does not include any payment which is not based on the franchise agreement, nor any payment which varies according to the number or amount of referrals by the franchisor or franchisee or which is based on a franchise agreement which has been adjusted on the basis of a previous number or amount of referrals by the franchiser or franchisees. A franchise agreement may not be constructed to insulate against kickbacks or referral fees.

(c) *Definitions.* As used in this section:

(1) *Associate* is defined in section 3(8) of RESPA (12 U.S.C. 2602(8)).

(2) *Affiliate relationship* means the relationship among business entities where one entity has effective control over the other by virtue of a partnership or other agreement or is under common control with the other by a third entity or where an entity is a corporation related to another corporation as parent to subsidiary by an identity of stock ownership.

(3) *Beneficial ownership* means the effective ownership of an interest in a provider of settlement services or the right to use and control the ownership interest involved even though legal ownership or title may be held in another person's name.

(4) *Control,* as used in the definitions of ''associate'' and ''affiliate relationship,'' means that a person:

(i) Is a general partner, officer, director, or employer of another person;

(ii) Directly or indirectly or acting in concert with others, or through one or more subsidiaries, owns, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interests of another person;

(iii) Affirmatively influences in any manner the election of a majority of the directors of another person; or

(iv) Has contributed more than 20 percent of the capital of the other person.

(5) *Direct ownership* means the holding of legal title to an interest in a provider of settlement service except where title is being held for the beneficial owner.

(6) *Franchise* is defined in 16 CFR 436.2(a).

(7) *Franchisor* is defined in 16 CFR 436.2(c).

(8) *Franchisee* is defined in 16 CFR 436.2(d).

(9) *Person who is in a position to refer settlement service business* means any real estate broker or agent, lender, mortgage broker, builder or developer, attorney, title company, title agent, or other person deriving a significant portion of his or her gross income from providing settlement services.

(d) *Recordkeeping.* Any documents provided pursuant to this section shall be retained for 5 years after the date of execution.

(e) *Appendix B of this part.* Illustrations in Appendix B of this part demonstrate some of the requirements of this section.

§ 3500.16 Title companies.

No seller of property that will be purchased with the assistance of a federally related mortgage loan shall violate section 9 of RESPA (12 U.S.C. 2608). Section 3500.2 defines ''required use'' of a provider of a settlement service. Section 3500.19(c) explains the liability of a seller for a violation of this section.

§ 3500.17 Escrow accounts.

(a) *General.* This section sets out the requirements for an escrow account that a lender establishes in connection with a federally related mortgage loan. It sets limits for escrow accounts using calculations based on monthly payments and disbursements within a calendar year. If an escrow account involves biweekly or any other payment period, the requirements in this section shall be modified accordingly. A HUD Public Guidance Document entitled ''Biweekly Payments—Example'' provides examples of biweekly accounting and a HUD Public Guidance Document entitled ''Annual Escrow Account Disclosure Statement—Example'' provides examples of a 3-year accounting cycle that may be used in accordance with paragraph (c)(9) of this section.

(b) *Definitions.* As used in this section:

Acceptable accounting method means an accounting method that a servicer uses to conduct an escrow account analysis for an escrow account subject to the provisions of § 3500.17(c).

Aggregate (or) composite analysis, hereafter called *aggregate analysis,* means an accounting method a servicer uses in conducting an escrow account analysis by computing the sufficiency of escrow account funds by analyzing the account as a whole. Appendix F to this part sets forth examples of aggregate escrow account analyses.

Annual Escrow Account Statement means a statement containing all of the information set forth in § 3500.17(i). As noted in § 3500.17(i), a servicer shall submit an annual escrow account statement to the borrower within 30 calendar days of the end of the escrow account computation year, after conducting an escrow account analysis.

Conversion date means the date three years after the publication date of the rule adding this section (i.e., October 27, 1997) by which date all servicers shall use aggregate analysis.

Cushion or reserve (hereafter cushion) means funds that a servicer may require a borrower to pay into an escrow account to cover unanticipated disbursements or disbursements made before the borrower's payments are available in the account, as limited by § 3500.17(c).

Deficiency is the amount of a negative balance in an escrow account. As noted in § 3500.17(f), if a servicer advances funds for a borrower, then the servicer must perform an escrow account analysis before seeking repayment of the deficiency.

Delivery means the placing of a document in the United States mail, first-class postage paid, addressed to the last known address of the recipient. Hand delivery also constitutes delivery.

Disbursement date means the date on which the servicer actually pays an escrow item from the escrow account. Section 3500.17(k) provides that the servicer shall use as the disbursement date a date on or before the earlier of the deadline to take advantage of discounts, if available, or the deadline to avoid a penalty.

Escrow account means any account that a servicer establishes or controls on behalf of a borrower to pay taxes, insurance premiums (including flood insurance), or other charges with respect to a federally related mortgage loan, including charges that the borrower and servicer have voluntarily agreed that the servicer should collect and pay. The definition encompasses any account established for this purpose, including a ''trust account'', ''reserve account'', ''impound account'', or other term in different localities. An ''escrow account'' includes any arrangement where the servicer adds a portion of the borrower's payments to principal and subsequently deducts from principal the disbursements for escrow account items.

For purposes of this section, the term ''escrow account'' excludes any account that is under the borrower's total control.

Escrow account analysis means the accounting that a servicer conducts in the form of a trial running balance for an escrow account to:

(1) Determine the appropriate target balances;

(2) Compute the borrower's monthly payments for the next escrow account computation year and any deposits needed to establish or maintain the account; and

(3) Determine whether shortages, surpluses or deficiencies exist.

Escrow account computation year is a 12-month period that a servicer establishes for the escrow account beginning with the borrower's initial payment date. The term includes each 12-month period thereafter, unless a servicer chooses to issue a short year statement under the conditions stated in § 3500.17(i)(4).

Escrow account item or *separate item* means any separate expenditure category, such as ''taxes'' or ''insurance'', for which funds are collected in the escrow account for disbursement. An escrow account item with installment payments, such as local property taxes, remains one escrow account item regardless of multiple disbursement dates to the tax authority.

Initial escrow account statement means the first disclosure statement that the servicer delivers to the borrower concerning the borrower's escrow account. The initial escrow account statement shall meet the requirements of § 3500.17(g) and be in substantially the format set forth in § 3500.17(h).

Installment payment means one of two or more payments payable on an escrow account item during an escrow account computation year. An example of an installment payment is where a jurisdiction bills quarterly for taxes.

Payment due date means the date each month when the borrower's monthly payment to an escrow account is due to the servicer. The initial payment date is the borrower's first payment due date to an escrow account.

Phase-in period means the period beginning on the effective date of this final rule and ending on the conversion date, i.e., October 27, 1997, by which date all servicers shall use the aggregate accounting method in conducting escrow account analyses.

Post-rule account means an escrow account established in connection with a federally related mortgage loan whose settlement date is on or after the effective date of this section.

Pre-accrual is a practice some servicers use to require borrowers to deposit funds, needed for disbursement and maintenance of a cushion, in the escrow account some period before the disbursement date. Pre-accrual is subject to the limitations of § 3500.17(c).

Pre-rule account is an escrow account established in connection with a federally related mortgage loan whose settlement date is before the effective date of this rule.

Shortage means an amount by which a current escrow account balance falls short of the target balance at the time of escrow analysis.

Single-item analysis means an accounting method servicers use in conducting an escrow account analysis by computing the sufficiency of escrow account funds by considering each escrow item separately. Appendix F to this part sets forth examples of single-item analysis.

Submission (of an escrow account statement) means the delivery of the statement.

Surplus means an amount by which the current escrow account balance exceeds the target balance for the account.

System of recordkeeping means the servicer's method of keeping information that reflects the facts relating to that servicer's handling of the borrower's escrow account, including, but not limited to, the payment of amounts from the escrow account and the submission of initial and annual escrow account statements to borrowers.

Target balance means the estimated month end balance in an escrow account that is just sufficient to cover the remaining disbursements from the escrow account in the escrow account computation year, taking into account the remaining scheduled periodic payments, and a cushion, if any.

Trial running balance means the accounting process that derives the target balances over the course of an escrow account computation year. Section 3500.17(d) provides a description of the steps involved in performing a trial running balance.

(c) *Limits on payments to escrow accounts; acceptable accounting methods to determine limits.*

(1) A lender or servicer (hereafter servicer) shall not require a borrower to deposit into any escrow account, created in connection with a federally related mortgage loan, more than the following amounts:

(i) *Charges at settlement or upon creation of an escrow account.* At the time a servicer creates an escrow account for a borrower, the servicer may charge the borrower an amount sufficient to pay the charges respecting the mortgaged property, such as taxes and insurance, which are attributable to the period from the date such payment(s) were last paid until the initial payment date. The ''amount sufficient to pay'' is computed so that the lowest month end target balance projected for the escrow account computation year is zero (–0–) (see Step 2 in Appendix F to this part). In addition, the servicer may charge the borrower a cushion that shall be no greater than one-sixth (1/6) of the estimated total annual payments from the escrow account.

(ii) *Charges during the life of the escrow account.* Throughout the life of an escrow account, the servicer may charge the borrower a monthly sum equal to one-twelfth (1/12) of the total annual escrow payments which the servicer reasonably anticipates paying from the account. In addition, the servicer may add an amount to maintain a cushion no greater than one-sixth (1/6) of the estimated total annual payments from the account. However, if a servicer determines through an escrow account analysis that there is a shortage or deficiency, the servicer may require the borrower to pay additional deposits to make up the shortage or eliminate the deficiency, subject to the limitations set forth in § 3500.17(f).

(2) *Escrow analysis at creation of escrow account.* Before establishing an escrow account, the servicer shall conduct an escrow account analysis to determine the amount the borrower shall deposit into the escrow account, subject to the limitations of § 3500.17(c)(1)(i) and the amount of the borrower's periodic payments into the escrow account, subject to the limitations of § 3500.17(c)(1)(ii). In conducting the escrow account analysis, the servicer shall estimate the disbursement amounts according to § 3500.17(c)(7). Pursuant to § 3500.17(k), the servicer shall use a date on or before the earlier of the deadline to take advantage of discounts, if available, or the deadline to avoid a penalty as the disbursement date for the escrow item. Upon completing the initial escrow account analysis, the servicer shall prepare and deliver an initial escrow account statement to the borrower, as set forth in § 3500.17(g). The servicer shall use the escrow account analysis to determine whether a surplus, shortage or deficiency exists since settlement and shall make any adjustments to the account pursuant to § 3500.17(f).

(3) Subsequent escrow account analyses. For each escrow account, the servicer shall conduct an escrow account analysis at the completion of

the escrow account computation year to determine the borrower's monthly escrow account payments for the next computation year, subject to the limitations of § 3500.17(c)(1)(ii). In conducting the escrow account analysis, the servicer shall estimate the disbursement amounts according to § 3500.17(c)(7). Pursuant to § 3500.17(k), the servicer shall use a date on or before the earlier of the deadline to take advantage of discounts, if available, or the deadline to avoid a penalty as the disbursement date for the escrow item. The servicer shall use the escrow account analysis to determine whether a surplus, shortage or deficiency exists and shall make any adjustments to the account pursuant to § 3500.17(f). Upon completing an escrow account analysis, the servicer shall prepare and submit an annual escrow account statement to the borrower, as set forth in § 3500.17(i).

(4) Acceptable accounting methods to determine escrow limits. The following are acceptable accounting methods that servicers may use in conducting an escrow account analysis.

(i) Pre-rule accounts. For pre-rule accounts, servicers may use either single-item analysis or aggregate-analysis during the phase-in period. In conducting the escrow account analysis, servicers shall use ''month-end'' accounting. Under month-end accounting, the timing of the disbursements and payments within the month is irrelevant. As of the conversion date, all pre-rule accounts shall comply with the requirements for post-rule accounts in paragraph (c)(4)(ii) of this section. During the phase-in period, the transfer of servicing of a pre-rule account to another servicer does not convert the account to a post-rule account. After the effective date of this rule, refinancing transactions (as defined in § 3500.2) shall comply with the requirements for post-rule accounts.

(ii) Post-rule accounts. For post-rule accounts, servicers shall use aggregate accounting to conduct an escrow account analysis. In conducting the escrow account analysis, servicers shall use ''month-end'' accounting. Under month-end accounting, the timing of the disbursements and payments within the month is irrelevant.

(5) *Cushion.* For post-rule accounts, the cushion shall be no greater than one-sixth (⅙) of the estimated total annual disbursements from the escrow account using aggregate analysis accounting. For pre-rule accounts, the cushion may not exceed the total of one-sixth of the estimated annual disbursements for each escrow account item using single-item analysis accounting. In determining the cushion using single-item analysis, a servicer shall not divide an escrow account item into sub-accounts, even if the payee requires installment payments.

(6) *Restrictions on pre-accrual.* For pre-rule accounts, a servicer shall not require any pre-accrual that results in the escrow account balance exceeding the limits of paragraph (c)(1) of this section. In addition, if the mortgage documents in a pre-rule account are silent about the amount of pre-accrual, the servicer shall not require in excess of one month of pre-accrual, subject to the additional limitations provided in paragraph (c)(8) of this section. For post-rule accounts, a servicer shall not practice pre-accrual.

(7) *Servicer estimates of disbursement amounts.* To conduct an escrow account analysis, the servicer shall estimate the amount of escrow account items to be disbursed. If the servicer knows the charge for an escrow item in the next computation year, then the servicer shall use that amount in estimating disbursement amounts. If the charge is unknown to the servicer, the servicer may base the estimate on the preceding year's charge, or the preceding year's charge as modified by an amount not exceeding the most recent year's change in the national Consumer Price Index for all urban consumers (CPI, all items). In cases of unassessed new construction, the servicer may base an estimate on the assessment of comparable residential property in the market area.

(8) *Provisions in mortgage documents.* The servicer shall examine the mortgage loan documents to determine the applicable cushion and limitations on pre-accrual for each escrow account. If the mortgage loan documents provide for lower cushion limits or less pre-accrual than this section, then the terms of the loan documents apply. Where the terms of any mortgage loan document allow greater payments to an escrow account than allowed by this section, then this section controls the applicable limits. Where the mortgage loan documents do not specifically establish an escrow account, whether a servicer may establish an escrow account for the loan is a matter for determination by State law. If the mortgage loan document is silent on the escrow account limits (for cushion or pre-accrual) and a servicer establishes an escrow account under State law, then the limitations of this section apply unless State law provides for a lower amount. If the loan documents provide for escrow accounts up to the RESPA limits, then the servicer may require the maximum amounts consistent with this section, unless an applicable State law sets a lesser amount.

(9) *Assessments for periods longer than one year.* Some escrow account items may be billed for periods longer than one year. For example, servicers may need to collect flood insurance or water purification escrow funds for payment every three years. In such cases, the servicer shall estimate the borrower's payments for a full cycle of disbursements. For a flood insurance premium payable every 3 years, the servicer shall collect the payments reflecting 36 equal monthly amounts. For two out of the three years, however, the account balance may not reach its low monthly balance because the low point will be on a three-year cycle, as compared to an annual one. The annual escrow account statement shall explain this situation (see example in the HUD Public Guidance Document entitled ''Annual Escrow Account Disclosure Statement—Example'', available in accordance with § 3500.3).

(d) *Methods of escrow account analysis.* Paragraph (c) of this section prescribes acceptable accounting methods. The following sets forth the steps servicers shall use to determine whether their use of an acceptable accounting method conforms with the limitations in § 3500.17(c)(1). The steps set forth in this section derive maximum limits. Servicers may use accounting procedures that result in lower target balances. In particular, servicers may use a cushion less than the permissible cushion or no cushion at all. This section does not require the use of a cushion.

(1) *Aggregate analysis.* (i) When a servicer uses aggregate analysis in conducting the escrow account analysis, the target balances may not exceed the balances computed according to the following arithmetic operations:

(A) The servicer first projects a trial balance for the account as a whole over the next computation year (a trial running balance). In doing so the servicer assumes that it will make estimated disbursements on or before the earlier of the deadline to take advantage of discounts, if available, or the deadline to avoid a penalty. The servicer does not use pre-accrual on these disbursement dates. The servicer also assumes that the borrower will make monthly payments equal to one-twelfth of the estimated total annual escrow account disbursements.

(B) The servicer then examines the monthly trial balances and adds to the first monthly balance an amount just sufficient to bring the lowest monthly trial balance to zero, and adjusts all other monthly balances accordingly.

(C) The servicer then adds to the monthly balances the permissible cushion. The cushion is two months of the borrower's escrow payments to the servicer or a lesser amount specified by State law or the mortgage document (net of any increases or decreases because of prior year shortages or surpluses, respectively).

(ii) *Lowest monthly balance.* Under aggregate analysis, the lowest monthly target balance for the account shall be less than or equal to one-sixth of the estimated total annual escrow account disbursements or a lesser amount specified by State law or the mortgage document. The target balances that the servicer derives using these steps yield the maximum limit for the escrow account. Appendix F to this part illustrates these steps.

(2) *Single-item or other non-aggregate analysis method.* (i) When a servicer uses single-item analysis or any hybrid accounting method in conducting an escrow account analysis during the phase-in period, the target balances may not exceed the balances computed according to the following arithmetic operations:

(A) The servicer first projects a trial balance for each item over the next computation year (a trial running balance). In doing so the servicer assumes that it will make estimated disbursements on or before the earlier of the deadline to take advantage of discounts, if available, or the deadline to avoid a penalty. The servicer does not use pre-accrual on these disbursement dates. The servicer also assumes that the borrower will make periodic payments equal to one-twelfth of the estimated total annual escrow account disbursements.

(B) The servicer then examines the monthly trial balance for each escrow account item and adds to the first monthly balance for each separate item an amount just sufficient to bring the lowest monthly trial balance for that item to zero, and then adjusts all other monthly balances accordingly.

(C) The servicer then adds the permissible cushion, if any, to the monthly balance for the separate escrow account item. The permissible cushion is two months of escrow payments for the escrow account item (net of any increases or decreases because of prior year shortages or surpluses, respectively) or a lesser amount specified by State law or the mortgage document.

(D) The servicer then examines the balances for each item to make certain that the lowest monthly balance for that item is less than or equal to one-sixth of the estimated total annual escrow account disbursements for that item or a lesser amount specified by State law or the mortgage document.

(ii) In performing an escrow account analysis using single-item analysis, servicers may account for each escrow account item separately, but servicers shall not further divide accounts into sub-accounts, even if the payee of a disbursement requires installment payments. The target balances that the servicer derives using these steps yield the maximum limit for the escrow account. Appendix F to this part illustrates these steps.

(e) *Transfer of servicing.* (1) If the new servicer changes either the monthly payment amount or the accounting method used by the transferor (old) servicer, then the new servicer shall provide the borrower with an initial escrow account statement within 60 days of the date of servicing transfer.

(i) Where a new servicer provides an initial escrow account statement upon the transfer of servicing, the new servicer shall use the effective date of the transfer of servicing to establish the new escrow account computation year.

(ii) Where the new servicer retains the monthly payments and accounting method used by the transferor servicer, then the new servicer may continue to use the escrow account computation year established by the transferor servicer or may choose to establish a different computation year using a short-year statement. At the completion of the escrow account computation year or any short year, the new servicer shall perform an escrow analysis and provide the borrower with an annual escrow account statement.

(2) The new servicer shall treat shortages, surpluses and deficiencies in the transferred escrow account according to the procedures set forth in § 3500.17(f).

(3) A pre-rule account remains a pre-rule account upon the transfer of servicing to a new servicer so long as the transfer occurs before the conversion date.

(f) *Shortages, surpluses, and deficiencies requirements.* (1) *Escrow account analysis.* For each escrow account, the servicer shall conduct an escrow account analysis to determine whether a surplus, shortage or deficiency exists.

(i) As noted in § 3500.17(c) (2) and (3), the servicer shall conduct an escrow account analysis upon establishing an escrow account and at completion of the escrow account computation year.

(ii) The servicer may conduct an escrow account analysis at other times during the escrow computation year. If a servicer advances funds in paying a disbursement, which is not the result of a borrower's payment default under the underlying mortgage document, then the servicer shall conduct an escrow account analysis to determine the extent of the deficiency before seeking repayment of the funds from the borrower under this paragraph (f).

(2) *Surpluses.* (i) If an escrow account analysis discloses a surplus, the servicer shall, within 30 days from the date of the analysis, refund the surplus to the borrower if the surplus is greater than or equal to 50 dollars ($50). If the surplus is less than 50 dollars ($50), the servicer may refund such amount to the borrower, or credit such amount against the next year's escrow payments.

(ii) These provisions regarding surpluses apply if the borrower is current at the time of the escrow account analysis. A borrower is current if the servicer receives the borrower's payments within 30 days of the payment due date. If the servicer does not receive the borrower's payment within 30 days of the payment due date, then the servicer may retain the surplus in the escrow account pursuant to the terms of the mortgage loan documents.

(3) *Shortages.* (i) If an escrow account analysis discloses a shortage of less than one month's escrow account payment, then the servicer has three possible courses of action:

(A) The servicer may allow a shortage to exist and do nothing to change it;

(B) The servicer may require the borrower to repay the shortage amount within 30 days; or

(C) The servicer may require the borrower to repay the shortage amount in equal monthly payments over at least a 12-month period.

(ii) If an escrow account analysis discloses a shortage that is greater than or equal to one month's escrow account payment, then the servicer has two possible courses of action:

(A) The servicer may allow a shortage to exist and do nothing to change it; or

(B) The servicer may require the borrower to repay the shortage in equal monthly payments over at least a 12-month period.

(4) *Deficiency.* If the escrow account analysis confirms a deficiency, then the servicer may require the borrower to pay additional monthly deposits to the account to eliminate the deficiency.

(i) If the deficiency is less than one month's escrow account payment, then the servicer:

(A) May allow the deficiency to exist and do nothing to change it;

(B) May require the borrower to repay the deficiency within 30 days; or

(C) May require the borrower to repay the deficiency in 2 or more equal monthly payments.

(ii) If the deficiency is greater than or equal to 1 month's escrow payment, the servicer may allow the deficiency to exist and do nothing to change it or may require the borrower to repay the deficiency in two or more equal monthly payments.

(iii) These provisions regarding deficiencies apply if the borrower is current at the time of the escrow account analysis. A borrower is current if the servicer receives the borrower's payments within 30 days of the payment due date. If the servicer does not receive the borrower's payment within 30 days of the payment due date, then the servicer may recover the deficiency pursuant to the terms of the mortgage loan documents.

(5) *Notice of Shortage or Deficiency in Escrow Account.* The servicer shall notify the borrower at least once during the escrow account computation year if there is a shortage or deficiency in the escrow account. The notice may be part of the annual escrow account statement or it may be a separate document.

(g) *Initial Escrow Account Statement.* (1) Submission at settlement, or within 45 calendar days of settlement. As noted in § 3500.17(c)(2), the servicer shall conduct an escrow account analysis before establishing an escrow account to determine the amount the borrower shall deposit into the escrow account, subject to the limitations of § 3500.17(c)(1)(i). After conducting the escrow account analysis for each escrow account, the servicer shall submit an initial escrow account statement to the borrower at settlement or within 45 calendar days of settlement for escrow accounts that are established as a condition of the loan.

(i) The initial escrow account statement shall include the amount of the borrower's monthly mortgage payment and the portion of the monthly payment going into the escrow account and shall itemize the estimated taxes, insurance premiums, and other charges that the servicer reasonably anticipates to be paid from the escrow account during the escrow account computation year and the anticipated disbursement dates of those charges. The initial escrow account statement shall indicate the amount that the servicer selects as a cushion. The statement shall include a trial running balance for the account.

(ii) Pursuant to § 3500.17(h)(2), the servicer may incorporate the initial escrow account statement into the HUD–1 or HUD–1A settlement statement. If the servicer does not incorporate the initial escrow account statement into the HUD–1 or HUD–1A settlement statement, then the servicer shall submit the initial escrow account statement to the borrower as a separate document.

(2) *Time of submission of initial escrow account statement for an escrow account established after settlement.* For escrow accounts established after settlement (and which are not a condition of the loan), a servicer shall submit an initial escrow account statement to a borrower within 45 calendar days of the date of establishment of the escrow account.

(h) *Format for initial escrow account statement.* (1) The format and a completed example for an initial escrow account statement are set out in HUD Public Guidance Documents entitled ''Initial Escrow Account Disclosure Statement—Format'' and ''Initial Escrow Account Disclosure Statement—Example'', available in accordance with § 3500.3.

(2) *Incorporation of Initial Escrow Account Statement Into HUD–1 or HUD–1A Settlement Statement.* Pursuant to § 3500.9(a)(11), a servicer may add the initial escrow account statement to the HUD–1 or HUD–1A settlement statement. The servicer may include the initial escrow account statement in the basic text or may attach the initial escrow account statement as an additional page to the HUD–1 or HUD–1A settlement statement.

(3) *Identification of Payees.* The initial escrow account statement need not identify a specific payee by name if it provides sufficient information to identify the use of the funds. For example, appropriate entries include: county taxes, hazard insurance, condominium dues, etc. If a particular payee, such as a taxing body, receives more than one payment during the escrow account computation year, the statement shall indicate each payment and disbursement date. If there are several taxing authorities or insurers, the statement shall identify each taxing body or insurer (e.g., ''City Taxes'', ''School Taxes'', ''Hazard Insurance'', or ''Flood Insurance,'' etc.).

(i) *Annual Escrow Account Statements.* For each escrow account, a servicer shall submit an annual escrow account statement to the borrower within 30 days of the completion of the escrow account computation year. The servicer shall also submit to the borrower the previous year's projection or initial escrow account statement. The servicer shall conduct an escrow account analysis before submitting an annual escrow account statement to the borrower.

(1) *Contents of Annual Escrow Account Statement.* The annual escrow account statement shall provide an account history, reflecting the activity in the escrow account during the escrow account computation year, and a projection of the activity in the account for the next year. In preparing the statement, the servicer may assume scheduled payments and disbursements will be made for the final 2 months of the escrow account computation year. The annual escrow account statement shall include, at a minimum, the following:

(i) The amount of the borrower's current monthly mortgage payment and the portion of the monthly payment going into the escrow account;

(ii) The amount of the past year's monthly mortgage payment and the portion of the monthly payment that went into the escrow account;

(iii) The total amount paid into the escrow account during the past computation year;

(iv) The total amount paid out of the escrow account during the same period for taxes, insurance premiums, and other charges;

(v) The balance in the escrow account at the end of the period;

(vi) An explanation of how any surplus is being handled by the servicer;

(vii) An explanation of how any shortage or deficiency is to be paid by the borrower; and

(viii) If applicable, the reason(s) why the estimated low monthly balance was not reached, as indicated by noting differences between the most recent account history and last year's projection. HUD Public Guidance Documents entitled ''Annual Escrow Account Disclosure Statement—Format'' and ''Annual Escrow Account Disclosure Statement—Example'' set forth an acceptable format and methodology for conveying this information.

(2) *No annual statements in the case of default, foreclosure, or bankruptcy.* This paragraph (i)(2) contains an exemption from the provisions of § 3500.17(i)(1). If at the time the servicer conducts the escrow account analysis the borrower is more than 30 days overdue, then the servicer is exempt from the requirements of submitting an annual escrow account statement to the borrower under § 3500.17(i). This exemption also applies in situations where the servicer has brought an action for foreclosure under the underlying mortgage loan, or where the borrower is in bankruptcy proceedings. If the servicer does not issue an annual statement pursuant to this exemption and the loan subsequently is reinstated

or otherwise becomes current, the servicer shall provide a history of the account since the last annual statement (which may be longer than 1 year) within 90 days of the date the account became current.

(3) *Delivery with other material.* The servicer may deliver the annual escrow account statement to the borrower with other statements or materials, including the Substitute 1098, which is provided for federal income tax purposes.

(4) *Short year statements.* A servicer may issue a short year annual escrow account statement (''short year statement'') to change one escrow account computation year to another. By using a short year statement a servicer may adjust its production schedule or alter the escrow account computation year for the escrow account.

(i) *Effect of short year statement.* The short year statement shall end the ''escrow account computation year'' for the escrow account and establish the beginning date of the new escrow account computation year. The servicer shall deliver the short year statement to the borrower within 60 days from the end of the short year.

(ii) *Short year statement upon servicing transfer.* Upon the transfer of servicing, the transferor (old) servicer shall submit a short year statement to the borrower within 60 days of the effective date of transfer.

(iii) *Short year statement upon loan payoff.* If a borrower pays off a mortgage loan during the escrow account computation year, the servicer shall submit a short year statement to the borrower within 60 days after receiving the pay-off funds.

(j) *Formats for annual escrow account statement.* The formats and completed examples for annual escrow account statements using single-item analysis (pre-rule accounts) and aggregate analysis are set out in HUD Public Guidance Documents entitled ''Annual Escrow Account Disclosure Statement—Format'' and ''Annual Escrow Account Disclosure Statement—Example''.

(k) *Timely payments.* (1) If the terms of any federally related mortgage loan require the borrower to make payments to an escrow account, the servicer shall pay the disbursements in a timely manner, that is, by the disbursement date, so long as the borrower's payment is not more than 30 days overdue. In calculating the disbursement date, the servicer shall use a date on or before the earlier of the deadline to take advantage of discounts, if available, or the deadline to avoid a penalty.

(2) The servicer shall advance funds to make disbursements in a timely manner so long as the borrower's payment is not more than 30 days overdue. Upon advancing funds to pay a disbursement, the servicer may seek repayment from the borrower for the deficiency pursuant to § 3500.17(f).

(l) *System of recordkeeping.* (1) Each servicer shall keep records, which may involve electronic storage, microfiche storage, or any method of computerized storage, so long as the information is easily retrievable, reflecting the servicer's handling of each borrower's escrow account. The servicer's records shall include, but not be limited to, the payment of amounts into and from the escrow account and the submission of initial and annual escrow account statements to the borrower.

(2) The servicer responsible for servicing the borrower's escrow account shall maintain the records for that account for a period of at least five years after the servicer last serviced the escrow account.

(3) A servicer shall provide the Secretary with information contained in the servicer's records for a specific escrow account, or for a number or class of escrow accounts, within 30 days of the Secretary's written request for the information. The servicer shall convert any information contained in electronic storage, microfiche or computerized storage to paper copies for review by the Secretary.

(i) To aid in investigations, the Secretary may also issue an administrative subpoena for the production of documents, and for the testimony of such witnesses as the Secretary deems advisable.

(ii) If the subpoenaed party refuses to obey the Secretary's administrative subpoena, the Secretary is authorized to seek a court order requiring compliance with the subpoena from any United States district court. Failure to obey such an order of the court may be punished as contempt of court.

(4) Borrowers may seek information contained in the servicer's records by complying with the provisions set forth in 12 U.S.C. 2605(e) and § 3500.21(f).

(5) After receiving a request (by letter or subpoena) from the Department for information relating to whether a servicer submitted an escrow account statement to the borrower, the servicer shall respond within 30 days. If the servicer is unable to provide the Department with such information, the Secretary shall deem that lack of information to be evidence of the servicer's failure to submit the statement to the borrower.

(m) *Penalties.* A servicer's failure to submit to a borrower an initial or annual escrow account statement meeting the requirements of this part shall constitute a violation of section 10(d) of RESPA (12 U.S.C. 2609(d)) and this section. For each such violation, the Secretary shall assess a civil penalty in accordance with section 10(d) of RESPA.

(n) *Civil penalties procedures.* The following procedures shall apply whenever the Department seeks to impose a civil money penalty for violation of section 10(c) of RESPA (12 U.S.C. 2609(c)):

(1) *Purpose and scope.* This paragraph (n) explains the procedures by which the Secretary may impose penalties under 12 U.S.C. 2609(d). These procedures include administrative hearings, judicial review, and collection of penalties. This paragraph (n) governs penalties imposed under 12 U.S.C. 2609(d) and, when noted, adopts those portions of 24 CFR part 30, subpart E, that apply to all other civil penalty proceedings initiated by the Secretary.

(2) *Authority.* The Secretary has the authority to impose civil penalties under section 10(d) of RESPA (12 U.S.C. 2609(d)).

(3) *Notice of intent to impose civil money penalties.* Whenever the Secretary intends to impose a civil money penalty for violations of section 10(c) of RESPA (12 U.S.C. 2609(c)), the responsible program official, or his or her designee, shall serve a written Notice of Intent to Impose Civil Money Penalties (Notice of Intent) upon any servicer on which the Secretary intends to impose the penalty. A copy of the Notice of Intent must be filed with the Chief Docket Clerk, Office of Administrative Law Judges, at the address provided in the Notice of Intent. The Notice of Intent will provide:

(i) A short, plain statement of the facts upon which the Secretary has determined that a civil money penalty should be imposed, including a brief description of the specific violations under 12 U.S.C. 2609(c) with which the servicer is charged and whether such violations are believed to be intentional or unintentional in nature, or a combination thereof;

(ii) The amount of the civil money penalty that the Secretary intends to impose and whether the limitations in 12 U.S.C. 2609(d)(1), apply;

(iii) The right of the servicer to a hearing on the record to appeal the Secretary's preliminary determination to impose a civil penalty;

(iv) The procedures to appeal the penalty;

(v) The consequences of failure to appeal the penalty; and

(vi) The name, address, and telephone number of the representative of the Department, and the address of the Chief Docket Clerk, Office of

Administrative Law Judges, should the servicer decide to appeal the penalty.

(4) *Appeal procedures.* (i) *Answer.* To appeal the imposition of a penalty, a servicer shall, within 30 days after receiving service of the Notice of Intent, file a written Answer with the Chief Docket Clerk, Office of Administrative Law Judges, Department of Housing and Urban Development, at the address provided in the Notice of Intent. The Answer shall include a statement that the servicer admits, denies, or does not have (and is unable to obtain) sufficient information to admit or deny each allegation made in the Notice of Intent. A statement of lack of information shall have the effect of a denial. Any allegation that is not denied shall be deemed admitted. Failure to submit an Answer within the required period of time will result in a decision by the Administrative Law Judge based upon the Department's submission of evidence in the Notice of Intent.

(ii) *Submission of evidence.* A servicer that receives the Notice of Intent has a right to present evidence. Evidence must be submitted within 45 calendar days from the date of service of the Notice of Intent, or by such other time as may be established by the Administrative Law Judge (ALJ). The servicer's failure to submit evidence within the required period of time will result in a decision by the Administrative Law Judge based upon the Department's submission of evidence in the Notice of Intent. The servicer may present evidence of the following:

(A) The servicer did submit the required escrow account statement(s) to the borrower(s); or

(B) Even if the servicer did not submit the required statement(s), that the failure was not the result of an intentional disregard of the requirements of RESPA (for purposes of determining the penalty).

(iii) *Review of the record.* The Administrative Law Judge will review the evidence submitted by the servicer, if any, and that submitted by the Department. The Administrative Law Judge shall make a determination based upon a review of the written record, except that the Administrative Law Judge may order an oral hearing if he or she finds that the determination turns on the credibility or veracity of a witness, or that the matter cannot be resolved by review of the documentary evidence. If the Administrative Law Judge decides that an oral hearing is appropriate, then the procedural rules set forth at 24 CFR part 30, subpart E, shall apply, to the extent that they are not inconsistent with this section.

(iv) *Burden of Proof.* The burden of proof or the burden of going forward with the evidence shall be upon the proponent of an action. The Department's submission of evidence that the servicer's system of records lacks information that the servicer submitted the escrow account statement(s) to the borrower(s) shall satisfy the Department's burden. Upon the Department's presentation of evidence of this lack of information in the servicer's system of records, the burden of proof shifts from the Secretary to the servicer to provide evidence that it submitted the statement(s) to the borrower.

(v) *Standard of Proof.* The standard of proof shall be the preponderance of the evidence.

(5) *Determination of the Administrative Law Judge.*

(i) Following the hearing or the review of the written record, the Administrative Law Judge shall issue a decision that shall contain findings of fact, conclusions of law, and the amount of any penalties imposed. The decision shall include a determination of whether the servicer has failed to submit any required statements and, if so, whether the servicer's failure was the result of an intentional disregard for the law's requirements.

(ii) The Administrative Law Judge shall issue the decision to all parties within 30 days of the submission of the evidence or the post-hearing briefs, whichever is the last to occur.

(iii) The decision of the Administrative Law Judge shall constitute the final decision of the Department and shall be final and binding on the parties.

(6) *Judicial review.* (i) A person against whom the Department has imposed a civil money penalty under this part may obtain a review of the Department's final decision by filing a written petition for a review of the record with the appropriate United States district court.

(ii) The petition must be filed within 30 days after the decision is filed with the Chief Docket Clerk, Office of Administrative Law Judges.

(7) *Collection of penalties.* (i) If any person fails to comply with the Department's final decision imposing a civil money penalty, the Secretary, if the time for judicial review of the decision has expired, may request the Attorney General to bring an action in an appropriate United States district court to obtain a judgment against the person that has failed to comply with the Department's final decision.

(ii) In any such collection action, the validity and appropriateness of the Department's final decision imposing the civil penalty shall not be subject to review in the district court.

(iii) The Secretary may obtain such other relief as may be available, including attorney fees and other expenses in connection with the collection action.

(iv) Interest on and other charges for any unpaid penalty may be assessed in accordance with 31 U.S.C. 3717.

(8) *Offset.* In addition to any other rights as a creditor, the Secretary may seek to collect a civil money penalty through administrative offset.

(9) At any time before the decision of the Administrative Law Judge, the Secretary and the servicer may enter into an administrative settlement. The settlement may include provisions for interest, attorney's fees, and costs related to the proceeding. Such settlement will terminate the appearance before the Administrative Law Judge.

(o) *Discretionary payments.* Any borrower's discretionary payment (such as credit life or disability insurance) made as part of a monthly mortgage payment is to be noted on the initial and annual statements. If a discretionary payment is established or terminated during the escrow account computation year, this change should be noted on the next annual statement. A discretionary payment is not part of the escrow account unless the payment is required by the lender, in accordance with the definition of ''settlement service'' in § 3500.2, or the servicer chooses to place the discretionary payment in the escrow account. If a servicer has not established an escrow account for a federally related mortgage loan and only receives payments for discretionary items, this section is not applicable.

(Approved by the Office of Management and Budget under control number 2502–0501)

§ 3500.18 Validity of contracts and liens.

Section 17 of RESPA (12 U.S.C. 2615) governs the validity of contracts and liens under RESPA.

§ 3500.19 Enforcement.

(a) *Enforcement Policy.* It is the policy of the Secretary regarding RESPA enforcement matters to cooperate with Federal, State or local agencies having supervisory powers over lenders or other persons with responsibilities under RESPA. Federal agencies with supervisory powers over lenders may use their powers to require compliance with RESPA. In addition, failure to comply with RESPA may be grounds for administrative action by the Secretary under part 24 of this title concerning debarment, suspension, ineligibility of

contractors and grantees, or under part 25 of this title concerning the HUD Mortgagee Review Board. Nothing in this paragraph is a limitation on any other form of enforcement which may be legally available.

(b) *Violations of section 8 of RESPA (12 U.S.C. 2607), § 3500.14, or § 3500.15.* Any person who violates §§ 3500.14 or 3500.15 shall be deemed to violate Section 8 of RESPA and shall be sanctioned accordingly.

(c) *Violations of section 9 of RESPA (12 U.S.C. 2608) or § 3500.16.* Any person who violates Section 3500.16 of this part shall be deemed to violate Section 9 of RESPA and shall be sanctioned accordingly.

(d) *Investigations.* The procedures for investigations and investigational proceedings are set forth in 24 CFR part 3800.

§ 3500.21 Mortgage servicing transfers.

(a) *Definitions.* As used in this section:

Master servicer means the owner of the right to perform servicing, which may actually perform the servicing itself or may do so through a subservicer.

Mortgage servicing loan means a federally related mortgage loan, as that term is defined in § 3500.2, subject to the exemptions in § 3500.5, when the mortgage loan is secured by a first lien. The definition does not include subordinate lien loans or open-end lines of credit (home equity plans) covered by the Truth in Lending Act and Regulation Z, including open-end lines of credit secured by a first lien.

Qualified written request means a written correspondence from the borrower to the servicer prepared in accordance with paragraph (e)(2) of this section.

Subservicer means a servicer who does not own the right to perform servicing, but who does so on behalf of the master servicer.

Transferee servicer means a servicer who obtains or who will obtain the right to perform servicing functions pursuant to an agreement or understanding.

Transferor servicer means a servicer, including a table funding mortgage broker or dealer on a first lien dealer loan, who transfers or will transfer the right to perform servicing functions pursuant to an agreement or understanding.

(b) *Servicing Disclosure Statement and Applicant Acknowledgement; requirements.* (1) At the time an application for a mortgage servicing loan is submitted, or within 3 business days after submission of the application, the lender, mortgage broker who anticipates using table funding, or dealer who anticipates a first lien dealer loan shall provide to each person who applies for such a loan a Servicing Disclosure Statement. This requirement shall not apply when the application for credit is turned down within three business days after receipt of the application. A format for the Servicing Disclosure Statement appears as Appendix MS–1 to this part. Except as provided in paragraph (b)(2) of this section, the specific language of the Servicing Disclosure Statement is not required to be used, but the Servicing Disclosure Statement must include the information set out in paragraph (b)(3) of this section, including the statement of the borrower's rights in connection with complaint resolution. The information set forth in Instructions to Preparer on the Servicing Disclosure Statement need not be included on the form given to applicants, and material in square brackets is optional or alternative language.

(2) The Applicant's Acknowledgement portion of the Servicing Disclosure Statement in the format stated is mandatory. Additional lines may be added to accommodate more than two applicants.

(3) The Servicing Disclosure Statement must contain the following information, except as provided in paragraph (b)(3)(ii) of this section:

(i) Whether the servicing of the loan may be assigned, sold or transferred to any other person at any time while the loan is outstanding. If the lender, table funding mortgage broker, or dealer in a first lien dealer loan does not engage in the servicing of any mortgage servicing loans, the disclosure may consist of a statement to the effect that there is a current intention to assign, sell, or transfer servicing of the loan.

(ii) The percentages (rounded to the nearest quartile (25%)) of mortgage servicing loans originated by the lender in each calendar year for which servicing has been assigned, sold, or transferred for such calendar year. Compliance with this paragraph (b)(3)(ii) is not required if the lender, table funding mortgage broker, or dealer on a first lien dealer loan chooses option B in the model format in paragraph (b)(4) of this section, including in square brackets the language ''[and have not serviced mortgage loans in the last three years.]''. The percentages shall be provided as follows:

(A) This information shall be set out for the most recent three calendar years completed, with percentages as of the end of each year. This information shall be updated in the disclosure no later than March 31 of the next calendar year. Each percentage should be obtained by using as the numerator the number of mortgage servicing loans originated during the calendar year for which servicing is transferred within the calendar year and, as the denominator, the total number of mortgage servicing loans originated in the calendar year. If the volume of transfers is less than 12.5 percent, the word ''nominal'' or the actual percentage amount of servicing transfers may be used.

(B) This statistical information does not have to include the assignment, sale, or transfer of mortgage loan servicing by the lender to an affiliate or subsidiary of the lender. However, lenders may voluntarily include transfers to an affiliate or subsidiary. The lender should indicate whether the percentages provided include assignments, sales, or transfers to affiliates or subsidiaries.

(C) In the alternative, if applicable, the following statement may be substituted for the statistical information required to be provided in accordance with paragraph (b)(3)(ii) of this section: ''We have previously assigned, sold, or transferred the servicing of federally related mortgage loans.''

(iii) The best available estimate of the percentage (0 to 25 percent, 26 to 50 percent, 51 to 75 percent, or 76 to 100 percent) of all loans to be made during the 12-month period beginning on the date of origination for which the servicing may be assigned, sold, or transferred. Each percentage should be obtained by using as the numerator the estimated number of mortgage servicing loans that will be originated for which servicing may be transferred within the 12-month period and, as the denominator, the estimated total number of mortgage servicing loans that will be originated in the 12-month period.

(A) If the lender, mortgage broker, or dealer anticipates that no loan servicing will be sold during the calendar year, the word ''none'' may be substituted for ''0 to 25 percent.'' If it is anticipated that all loan servicing will be sold during the calendar year, the word ''all'' may be substituted for ''76 to 100 percent.''

(B) This statistical information does not have to include the estimated assignment, sale, or transfer of mortgage loan servicing to an affiliate or subsidiary of that person. However, this information may be provided voluntarily. The Servicing Disclosure Statements should indicate whether the percentages provided include assignments, sales or transfers to affiliates or subsidiaries.

(iv) The information set out in paragraphs (d) and (e) of this section.

(v) A written acknowledgement that the applicant (and any co-applicant) has/have read and understood the disclosure, and understand that the disclosure is a required part of the mortgage application. This acknowledgement shall be evidenced by the signature of the applicant and any co-applicant.

(4) The following is a model format, which includes several options, for complying with the requirements of paragraph (b)(3) of this section. The model format may be annotated with additional information that clarifies or enhances the model language. The lender or table funding mortgage broker (or dealer) should use the language that best describes the particular circumstances.

(i) *Model Format:* The following is the best estimate of what will happen to the servicing of your mortgage loan:

(A) *Option A.* We may assign, sell, or transfer the servicing of your loan while the loan is outstanding. [We are able to service your loan[.][,] and we [will] [will not] [haven't decided whether to] service your loan.]; or

(B) *Option B.* We do not service mortgage loans[.][,] [and have not serviced mortgage loans in the past three years.] We presently intend to assign, sell, or transfer the servicing of your mortgage loan. You will be informed about your servicer.

(C) As appropriate, the following paragraph may be used:

We assign, sell, or transfer the servicing of some of our loans while the loans are outstanding, depending on the type of loan and other factors. For the program for which you have applied, we expect to [assign, sell, or transfer all of the mortgage servicing][retain all of the mortgage servicing] [assign, sell, or transfer _____% of the mortgage servicing].

(ii) [Reserved]

(c) *Servicing Disclosure Statement and Applicant Acknowledgement; delivery.* The lender, table funding mortgage broker, or dealer that anticipates a first lien dealer loan shall deliver Servicing Disclosure Statements to each applicant for mortgage servicing loans. Each applicant or co-applicant must sign an Acknowledgement of receipt of the Servicing Disclosure Statement before settlement.

(1) In the case of a face-to-face interview with one or more applicants, the Servicing Disclosure Statement shall be delivered at the time of application. An applicant present at the interview may sign the Acknowledgment on his or her own behalf at that time. An applicant present at the interview also may accept delivery of the Servicing Disclosure Statement on behalf of the other applicants.

(2) If there is no face-to-face interview, the Servicing Disclosure Statement shall be delivered by placing it in the mail, with prepaid first-class postage, within 3 business days from receipt of the application. If co-applicants indicate the same address on their application, one copy delivered to that address is sufficient. If different addresses are shown by co-applicants on the application, a copy must be delivered to each of the co-applicants.

(3) The signed Applicant Acknowledgment(s) shall be retained for a period of 5 years after the date of settlement as part of the loan file for every settled loan. There is no requirement for retention of Applicant Acknowledgment(s) if the loan is not settled.

(d) *Notices of Transfer; loan servicing.* (1) Requirement for notice. (i) Except as provided in this paragraph (d)(1)(i) or paragraph (d)(1)(ii) of this section, each transferor servicer and transferee servicer of any mortgage servicing loan shall deliver to the borrower a written Notice of Transfer, containing the information described in paragraph (d)(3) of this section, of any assignment, sale, or transfer of the servicing of the loan. The following transfers are not considered an assignment, sale, or transfer of mortgage loan servicing for purposes of this requirement if there is no change in the payee, address to which payment must be delivered, account number, or amount of payment due:

(A) Transfers between affiliates;

(B) Transfers resulting from mergers or acquisitions of servicers or subservicers; and

(C) Transfers between master servicers, where the subservicer remains the same.

(ii) The Federal Housing Administration (FHA) is not required under paragraph (d) of this section to submit to the borrower a Notice of Transfer in cases where a mortgage insured under the National Housing Act is assigned to FHA.

(2) *Time of notice.* (i) Except as provided in paragraph (d)(2)(ii) of this section:

(A) The transferor servicer shall deliver the Notice of Transfer to the borrower not less than 15 days before the effective date of the transfer of the servicing of the mortgage servicing loan;

(B) The transferee servicer shall deliver the Notice of Transfer to the borrower not more than 15 days after the effective date of the transfer; and

(C) The transferor and transferee servicers may combine their notices into one notice, which shall be delivered to the borrower not less than 15 days before the effective date of the transfer of the servicing of the mortgage servicing loan.

(ii) The Notice of Transfer shall be delivered to the borrower by the transferor servicer or the transferee servicer not more than 30 days after the effective date of the transfer of the servicing of the mortgage servicing loan in any case in which the transfer of servicing is preceded by:

(A) Termination of the contract for servicing the loan for cause;

(B) Commencement of proceedings for bankruptcy of the servicer; or

(C) Commencement of proceedings by the Federal Deposit Insurance Corporation (FDIC) or the Resolution Trust Corporation (RTC) for conservatorship or receivership of the servicer or an entity that owns or controls the servicer.

(iii) Notices of Transfer delivered at settlement by the transferor servicer and transferee servicer, whether as separate notices or as a combined notice, will satisfy the timing requirements of paragraph (d)(2) of this section.

(3) *Notices of Transfer; contents.* The Notices of Transfer required under paragraph (d) of this section shall include the following information:

(i) The effective date of the transfer of servicing;

(ii) The name, consumer inquiry addresses (including, at the option of the servicer, a separate address where qualified written requests must be sent), and a toll-free or collect-call telephone number for an employee or department of the transferee servicer;

(iii) A toll-free or collect-call telephone number for an employee or department of the transferor servicer that can be contacted by the borrower for answers to servicing transfer inquiries;

(iv) The date on which the transferor servicer will cease to accept payments relating to the loan and the date on which the transferee servicer will begin to accept such payments. These dates shall either be the same or consecutive days;

(v) Information concerning any effect the transfer may have on the terms or the continued availability of mortgage life or disability insurance, or any other type of optional insurance, and any action the borrower must take to maintain coverage;

(vi) A statement that the transfer of servicing does not affect any other term or condition of the mortgage documents, other than terms directly related to the servicing of the loan; and

(vii) A statement of the borrower's rights in connection with complaint resolution, including the information set forth in paragraph (e) of this section. Appendix MS–2 of this part illustrates a statement satisfactory to the Secretary.

(4) *Notices of Transfer; sample notice.* Sample language that may be used to comply with the requirements of paragraph (d) of this section is set out in Appendix MS–2 of this part. Minor modifications to the sample language may be made to meet the particular circumstances of the servicer, but the substance of the sample language shall not be omitted or substantially altered.

(5) *Consumer protection during transfer of servicing.* During the 60-day period beginning on the effective date of transfer of the servicing of any mortgage servicing loan, if the transferor servicer (rather than the transferee servicer that should properly receive payment on the loan) receives payment on or before the applicable due date (including any grace period allowed under the loan documents), a late fee may not be imposed on the borrower with respect to that payment and the payment may not be treated as late for any other purposes.

(e) *Duty of loan servicer to respond to borrower inquiries.*

(1) *Notice of receipt of inquiry.* Within 20 business days of a servicer of a mortgage servicing loan receiving a qualified written request from the borrower for information relating to the servicing of the loan, the servicer shall provide to the borrower a written response acknowledging receipt of the qualified written response. This requirement shall not apply if the action requested by the borrower is taken within that period and the borrower is notified of that action in accordance with the paragraph (f)(3) of this section. By notice either included in the Notice of Transfer or separately delivered by first-class mail, postage prepaid, a servicer may establish a separate and exclusive office and address for the receipt and handling of qualified written requests.

(2) *Qualified written request; defined.* (i) For purposes of paragraph (e) of this section, a qualified written request means a written correspondence (other than notice on a payment coupon or other payment medium supplied by the servicer) that includes, or otherwise enables the servicer to identify, the name and account of the borrower, and includes a statement of the reasons that the borrower believes the account is in error, if applicable, or that provides sufficient detail to the servicer regarding information relating to the servicing of the loan sought by the borrower.

(ii) A written request does not constitute a qualified written request if it is delivered to a servicer more than 1 year after either the date of transfer of servicing or the date that the mortgage servicing loan amount was paid in full, whichever date is applicable.

(3) *Action with respect to the inquiry.* Not later than 60 business days after receiving a qualified written request from the borrower, and, if applicable, before taking any action with respect to the inquiry, the servicer shall:

(i) Make appropriate corrections in the account of the borrower, including the crediting of any late charges or penalties, and transmit to the borrower a written notification of the correction. This written notification shall include the name and telephone number of a representative of the servicer who can provide assistance to the borrower; or

(ii) After conducting an investigation, provide the borrower with a written explanation or clarification that includes:

(A) To the extent applicable, a statement of the servicer's reasons for concluding the account is correct and the name and telephone number of an employee, office, or department of the servicer that can provide assistance to the borrower; or

(B) Information requested by the borrower, or an explanation of why the information requested is unavailable or cannot be obtained by the servicer, and the name and telephone number of an employee, office, or department of the servicer that can provide assistance to the borrower.

(4) Protection of credit rating. (i) During the 60-business day period beginning on the date of the servicer receiving from a borrower a qualified written request relating to a dispute on the borrower's payments, a servicer may not provide adverse information regarding any payment that is the subject of the qualified written request to any consumer reporting agency (as that term is defined in section 603 of the Fair Credit Reporting Act, 15 U.S.C. 1681a).

(ii) In accordance with section 17 of RESPA (12 U.S.C. 2615), the protection of credit rating provision of paragraph (e)(4)(i) of this section does not impede a lender or servicer from pursuing any of its remedies, including initiating foreclosure, allowed by the underlying mortgage loan instruments.

(f) *Damages and costs.* (1) Whoever fails to comply with any provision of this section shall be liable to the borrower for each failure in the following amounts:

(i) *Individuals.* In the case of any action by an individual, an amount equal to the sum of any actual damages sustained by the individual as the result of the failure and, when there is a pattern or practice of noncompliance with the requirements of this section, any additional damages in an amount not to exceed $1,000.

(ii) *Class Actions.* In the case of a class action, an amount equal to the sum of any actual damages to each borrower in the class that result from the failure and, when there is a pattern or practice of noncompliance with the requirements of this section, any additional damages in an amount not greater than $1,000 for each class member. However, the total amount of any additional damages in a class action may not exceed the lesser of § 500,000 or 1 percent of the net worth of the servicer.

(iii) *Costs.* In addition, in the case of any successful action under paragraph (f) of this section, the costs of the action and any reasonable attorneys' fees incurred in connection with the action.

(2) *Nonliability.* A transferor or transferee servicer shall not be liable for any failure to comply with the requirements of this section, if within 60 days after discovering an error (whether pursuant to a final written examination report or the servicer's own procedures) and before commencement of an action under this section and the receipt of written notice of the error from the borrower, the servicer notifies the person concerned of the error and makes whatever adjustments are necessary in the appropriate account to ensure that the person will not be required to pay an amount in excess of any amount that the person otherwise would have paid.

(g) *Timely payments by servicer.* If the terms of any mortgage servicing loan require the borrower to make payments to the servicer of the loan for deposit into an escrow account for the purpose of assuring payment of taxes, insurance premiums, and other charges with respect to the mortgaged property, the servicer shall make payments from the escrow account in a timely manner for the taxes, insurance premiums, and other charges as the payments become due, as governed by the requirements in § 3500.17(k).

(h) *Preemption of State laws.* A lender who makes a mortgage servicing loan or a servicer shall be considered to have complied with the provisions of any State law or regulation requiring notice to a borrower at the time of application for a loan or transfer of servicing of a loan if the lender or servicer complies with the requirements of this section. Any State law requiring notice to the borrower at the time of application or at

the time of transfer of servicing of the loan is preempted, and there shall be no additional borrower disclosure requirements. Provisions of State law, such as those requiring additional notices to insurance companies or taxing authorities, are not preempted by section 6 of RESPA or this section, and this additional information may be added to a notice prepared under this section, if the procedure is allowable under State law.

(Approved by the Office of Management and Budget under control number 2502–0458)

3. Appendix A is amended by revising the heading of the appendix to read as follows:

Appendix A to Part 3500—Instructions for Completing HUD–1 and HUD–1A Settlement Statements; Sample HUD 1 and HUD 1A Statements

4. Appendix B is amended in Illustration 11, in the paragraph headed ''Comments,'' by substituting the reference ''section 3500.14(g)(1)'' for the reference ''Section 3500.14(g)(2)''.

5. Appendix MS–2 is revised to read as follows:

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APPENDIX MS-2 to PART 3500

[Sample language; use business stationery or similar heading]

NOTICE OF ASSIGNMENT, SALE, OR TRANSFER OF SERVICING RIGHTS

You are hereby notified that the servicing of your mortgage loan, that is, the right to collect payments from you, is being assigned, sold or transferred from _____ to _____, effective _____.

The assignment, sale or transfer of the servicing of the mortgage loan does not affect any term or condition of the mortgage instruments, other than terms directly related to the servicing of your loan.

Except in limited circumstances, the law requires that your present servicer send you this notice at least 15 days before the effective date of transfer, or at closing. Your new servicer must also send you this notice no later that 15 days after this effective date or at closing. [In this case, all necessary information is combined in this one notice].

Your present servicer is _____.
If you have any questions relating to the transfer of servicing from your present servicer call _____ [enter the name of an individual or department here] between _____ a.m. and _____ p.m. on the following days _____.
This is a [toll-free] or [collect call] number.

Your new servicer will be _____.

The business address for your new servicer is:
_____
_____.

The [toll-free] [collect call] telephone number of your new servicer is _____. If you have any questions relating to the transfer of servicing to your new servicer call _____ [enter the name of an individual or department here] at _____ [toll free or collect call telephone number] between _____ a.m. and _____ p.m. on the following days _____.

The date that your present servicer will stop accepting payments from you is _____. The date that your new servicer will start accepting payments from you is _____. Send all payments due on or after that date to your new servicer.

[Use this paragraph if appropriate; otherwise omit] The transfer of servicing rights may affect the terms of or the continued availability of mortgage life or disability insurance or any other type of optional insurance in the following manner:

_____
_____
_____
_____
_____

and you should take the following action to maintain coverage:

_____
_____
_____.

You should also be aware of the following information, which is set out in more detail in Section 6 of the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2605):

During the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old servicer before its due date may not be treated by the new loan servicer as late, and a late fee may not be imposed on you.

Section 6 of RESPA (12 U.S.C. 2605) gives you certain consumer rights. If you send a "qualified written request" to your loan servicer concerning the servicing of your loan, your servicer must provide you with a written acknowledgment within 20 Business Days of receipt of your request. A "qualified written request" is a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, which includes your name and account number, and your reasons for the request. [If you want to send a "qualified written request" regarding the servicing of your loan, it must be sent to this address:

_____
_____]

Not later than 60 Business Days after receiving your request, your servicer must make any appropriate corrections to your account, and must provide you with a written clarification regarding any dispute. During this 60-Business Day period, your servicer may not provide information to a consumer reporting agency concerning any overdue payment related to such period or qualified written request. However, this does not prevent the servicer from initiating foreclosure if proper grounds exist under the mortgage documents.

A Business Day is a day on which the offices of the business entity are open to the public for carrying on substantially all of its business functions.

Section 6 of RESPA also provides for damages and costs for individuals or classes of individuals in circumstances where servicers are shown to have violated the requirements of that Section. You should seek legal advice if you believe your rights have been violated.

[INSTRUCTIONS TO PREPARER: Delivery means placing the notice in the mail, first class postage prepaid, prior to 15 days before the effective date of transfer (transferor) or prior to 15 days after the effective date of transfer (transferee). However, this notice may be sent not more than 30 days after the effective date of the transfer of servicing rights if certain emergency business situations occur. See 24 CFR § 3500.21(d)(1)(ii). "Lender" may be substituted for "present servicer" where appropriate. These instructions should not appear on the format.]

_____ _____

PRESENT SERVICER [Signature not required] Date

[and][or]

_____ _____

FUTURE SERVICER [Signature not required] Date

Dated: March 6, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner,

[FR Doc. 96–6511 Filed 3–25–96; 8:45 am]

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federal register

Tuesday
March 26, 1996

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 165
Beverages: Bottled Water; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 165

[Docket No. 93N–0085]

Beverages: Bottled Water

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the quality standard for bottled water by establishing or revising allowable levels for 5 inorganic chemicals (IOC's) and 17 synthetic organic chemicals (SOC's), including 3 synthetic volatile organic chemicals (VOC's), 9 pesticide chemicals, and 5 nonpesticide chemicals. However, FDA is staying the effective date for the allowable levels for the 5 IOC's and 4 of the SOC's. FDA also is not changing the existing allowable level for sulfate in the bottled water quality standard. In addition, FDA is deferring final action on the proposed allowable level for the nonpesticide chemical di(2-ethylhexyl)phthalate (DEHP). This final rule will ensure that the minimum quality of bottled water, as affected by at least the 13 chemicals for which allowable levels are adopted and effective, remains comparable with the quality of public drinking water that meets the Environmental Protection Agency (EPA) standards.

DATES: The regulation is effective September 23, 1996. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications in 21 CFR 165.110(b)(4)(iii), effective September 23, 1996.

FOR FURTHER INFORMATION CONTACT: Henry S. Kim, Center For Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–205–4681.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 410 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 349), whenever EPA prescribes interim or revised National Primary Drinking Water Regulations (NPDWR's) under section 1412 of the Public Health Service Act (The Safe Drinking Water Act (SDWA) (42 U.S.C. 300f through 300j–9)), FDA is required to consult with EPA and either amend its regulations for bottled drinking water in § 165.110 (21 CFR 165.110) or publish in the Federal Register its reasons for not making such amendments.

In the Federal Register of July 17, 1992 (57 FR 31776) (hereinafter referred to as the July 1992 final rule), EPA published a final rule promulgating NPDWR's consisting of maximum contaminant levels (MCL's) for 18 SOC's and 5 IOC's. Further, in that final rule, EPA deferred establishing an MCL for sulfate in public drinking water.

In accordance with section 410 of the act, FDA published in the Federal Register of August 4, 1993 (58 FR 41612), a proposal to adopt EPA's MCL's for the 18 SOC's and 5 IOC's as allowable levels in the quality standard for bottled water (hereinafter referred to as the August 1993 proposal). In the August 1993 proposal, FDA tentatively concluded that the MCL's that EPA had established based on available toxicological information for the 18 SOC's and 5 IOC's in public drinking water were adequate to protect the public from the adverse health effects of these chemical contaminants in drinking water. Further, FDA tentatively concluded that adopting EPA's MCL's for the 18 SOC's and 5 IOC's as allowable levels in the bottled water quality standard was appropriate to protect the public from the adverse health effects of these chemical contaminants that may be found in bottled water.

FDA did not propose any change in the existing allowable level of 250 milligrams per liter (mg/L) for sulfate in bottled water. FDA had established this level in 1973 (38 FR 32558, November 26, 1973), based on the Public Health Service standard for sulfate in drinking water established on March 6, 1962 (27 FR 2152). Although EPA proposed to establish either 400 or 500 mg/L as the MCL for sulfate in public drinking water (55 FR 30370, July 25, 1990), it deferred action on this MCL in its July 1992 final rule and did not revise the existing secondary maximum contaminant level (SMCL) of 250 mg/L for this chemical (40 CFR 143.3) in public drinking water.

II. Summary of and Response to Comments

A. Summary of Comments

FDA received 11 comments in response to the August 1993 proposal. The comments represented the views of three foreign trade associations and one domestic trade association that represent bottled water manufacturers, two State health departments, a State environmental protection department, a European Communities General Agreement for Tariffs and Trade (EC GATT) Enquiry Point, a bottled water company, a supplier of packaging materials, and a nonprofit private organization. The majority of the comments stated that they generally supported the proposal. Two comments addressed the issue of Federal preemption of State requirements concerning the quality of bottled water and related monitoring requirements. The issue of Federal preemption of State requirements is outside the scope of the proposal and thus will not be discussed here. A number of comments suggested modifications to, or were opposed to, various provisions of the proposal. A summary of the suggested changes, the opposing comments, and the agency's responses follows.

B. Comments Pertaining to Allowable Levels in the Quality Standard for Bottled Water

1. One of the comments addressed the proposed allowable level of 0.006 mg/L for the chemical, DEHP. The comment pointed out that this chemical is prior sanctioned in § 181.27 (21 CFR 181.27) for use as a plasticizer when migrating from food-packaging material into foods with high water content and, as such, is approved for use in contact with food in § 177.1210 (21 CFR 177.1210) *Closures with sealing gaskets for food containers.* The comment also pointed out that DEHP is routinely used as a plasticizer in gaskets used in metal and plastic closures for the packaging of bottled water in accord with this approval, and that such use may result in levels of this chemical migrating into water that exceed the proposed allowable level. Thus, the comment maintained that finalizing the proposed allowable level for DEHP would result in a limit on the level of this chemical in bottled water that conflicts with this chemical's permitted use under the existing food additive regulation for closures with sealing gaskets, and that taking such action would effectively ban the use of this plasticizer. The comment further pointed out that gaskets containing DEHP are permitted for use in packaging food and bottled water under relevant European national regulations, and that these uses comply with the migration limit of 3 mg/kilograms proposed for DEHP established by the Scientific Committee for Food in their Synoptic Document 7.

FDA was not aware of the potential conflict between the proposed allowable level for DEHP and the existing prior sanction for this substance in § 181.27 at the time it published the proposal. The agency needs additional time to evaluate this matter and to determine an

appropriate course of action with respect to the proposed allowable level for DEHP. Therefore, FDA is deferring final action on the proposed allowable level for DEHP at this time.

2. Several comments asked FDA to clarify the status of bottled water products labeled as mineral water with respect to compliance with the existing allowable level of 250 mg/L for sulfate in bottled water. The comments stated that, in the Federal Register of January 5, 1993 (58 FR 393), FDA proposed to exempt bottled mineral water from complying with the allowable levels for certain substances, such as sulfate, that may be present at high levels in some mineral waters because the allowable levels in question have been established for aesthetic reasons and not for public health protection.

FDA did not fully address this issue in the August 1993 proposal. These comments are correct in noting that in January of 1993, FDA proposed to subject bottled mineral water to the bottled water quality standard but to exempt mineral water from complying with certain allowable levels, including that for sulfate, that were established for aesthetic reasons and not for public health protection. The January 1993 proposal was still pending when the August 1993 proposal was published. Bottled mineral water was not yet subject to the bottled water quality standard. Therefore, in addressing the allowable level for sulfate in the August 1993 proposal, FDA did not provide in the codified material that bottled mineral water would be exempt from the quality standard for sulfate.

In the Federal Register of November 13, 1995 (60 FR 57076) (hereinafter referred to as the November 1995 final rule), FDA published a final rule based on the January 1993 proposal that, among other things, established a standard of identity for bottled water (21 CFR part 165), which includes a definition for mineral water and which subjects mineral water to the quality standard regulations for bottled water. Bottled mineral water must also comply with the current good manufacturing practice (CGMP) regulations for bottled water in part 129 (21 CFR part 129). Thus, under the newly established regulations, bottled waters that meet the definition for ''mineral water'' in § 165.110(a)(2)(iii) must comply with the bottled water quality standard (i.e., the allowable levels for physical, chemical, microbiological, and radiological contaminants) in § 165.110(b).

However, FDA recognizes that mineral water with a high mineral content may not meet the allowable levels in the quality standard for certain physical and chemical attributes (i.e., color, odor, total dissolved solids (TDS), chloride, iron, manganese, sulfate, and zinc) that are based on EPA's SMCL's and, as such, are intended only to ensure the aesthetic quality of the water, i.e., SMCL's are not established for public health reasons. Consequently, in the November 1995 final rule (60 FR 57076 at 57125), FDA included provisions that exempt bottled mineral waters that meet the definition for ''mineral water'' in § 165.110(a)(2)(iii) from complying with the allowable levels for color, odor, TDS, chloride, iron, manganese, sulfate, and zinc. Therefore, bottled mineral waters do not have to comply with the allowable level of 250 mg/L for sulfate. FDA reflected this fact in the November 1995 final rule (60 FR 57076 at 57125) by including a footnote to the entry for sulfate in the listing of allowable levels under § 165.110(b)(4)(I)(A). Therefore, no action in response to this comment is necessary in this final rule.

3. One comment from an EC GATT Enquiry Point questioned whether European mineral waters that meet EC Council Directive 80/777/EEC of July 15, 1980, which established standards relating to the exploitation and marketing of natural mineral waters for member countries of the EC, but that contain levels of chemical contaminants that exceed FDA's proposed allowable levels, particularly those allowable levels that are based on EPA's SMCL's, can be marketed in the United States. The comment stated that European mineral waters should be exempt from complying with allowable levels that are based on aesthetic factors to prevent any unnecessary trade barriers.

The same comment also stated that, with regard to drinking waters, the proposed standards for barium, chloride, copper, fluoride, nitrate, trihalomethanes, TDS, and zinc are stricter than those established in EC Council Directive 80/778/EEC of July 15, 1980, relating to the quality of water intended for human consumption (other than natural mineral waters and medicinal waters). Moreover, the comment stated that EC Council Directive 80/778/EEC does not contain any limit for beryllium, thallium, dichloromethane, 1,2,4-trichlorobenzene, 1,1,2-trichloroethane, dioxin, DEHP, di(2-ethylhexyl)adipate (DEHA), and hexachlorocyclopentadiene. Consequently, the comment questioned whether European bottled waters that comply with EC Council Directive 80/778/EEC will be accepted on the U.S. market, or whether the allowable levels for chemical contaminants addressed in this final rule might create technical barriers to trade.

With regard to the U.S. standards for barium, chloride, copper, fluoride, nitrate, trihalomethanes, TDS, and zinc, FDA notes that the allowable levels for these chemical contaminants were established in previous rulemakings and thus are outside the scope of this rulemaking.

Further, FDA disagrees with the comment's assertion that trade barriers might be created because European bottled water products meeting EC Council Directives 80/777/EEC and 80/778/EEC may not meet the allowable levels for certain chemical contaminants in the quality standard for bottled water for the following two reasons:

First, as stated above, FDA recognizes that the levels of these physical and chemical contaminants in bottled mineral waters with high mineral content may exceed the allowable levels.

Thus, in the November 1995 final rule, FDA has provided that bottled mineral waters are exempt from complying with the allowable levels for color, odor, TDS, chloride, iron, manganese, sulfate, and zinc that are all based upon EPA's SMCL's. Therefore, European bottled mineral waters that meet the definition for ''mineral water'' in § 165.110(a)(2)(iii) do not have to comply with the allowable levels for these contaminants in the quality standard for bottled water. There is, consequently, no basis for the concern expressed by the comment.

Second, with respect to other chemical contaminants (i.e., beryllium, thallium, dichloromethane, 1,2,4-trichlorobenzene, 1,1,2-trichloroethane, hexachlorocyclopentadiene, dioxin, DEHP, and DEHA) addressed in this final rule and for which no limits are established in the EC Council Directive 80/778/EEC, the comment did not provide any evidence of any European bottled waters that would not meet the allowable levels for these chemical contaminants. In addition, except for the chemical DEHP, FDA is not aware of any evidence that would indicate that European bottled waters would not meet the allowable levels for the chemical contaminants addressed in this final rule.

Moreover, if a bottled water product (domestic or imported) exceeds an allowable level for a particular contaminant, under the labeling provisions of § 165.110(c), the bottler can still market that product, provided that the labeling bears a statement of substandard quality (e.g., if it exceeds the allowable level for thallium, the

labeling shall state either ''Contains Excessive Thallium'' or ''Contains Excessive Chemical Substances'' if the bottled water is not mineral water under § 165.110(c)(3)). Therefore, should a European or an American bottled water product exceed the allowable levels for certain contaminants, it still can be marketed in the United States if its labeling bears the prescribed statement for those contaminants.

Consequently, because FDA does not expect that European bottled waters will exceed the allowable levels for the chemical contaminants addressed in this final rule, and because bottled water that exceeds the allowable level for a contaminant can still be sold in the United States if it bears the prescribed label statement, FDA rejects the comment's suggestion that this final rule will create technical trade barriers.

However, FDA reminds water bottlers (domestic and foreign) that any bottled water containing a substance at a level considered injurious to health is adulterated under section 402(a)(1) of the act (21 U.S.C. 342(a)(1)) and is subject to regulatory action, regardless of whether or not the bottled water bears a label statement of substandard quality prescribed in § 165.110(c). In this regard, FDA notes that the GATT Agreement on Sanitary and Phytosanitary (SPS) measures, resulting from the Uruguay Round of Multilateral Trade Negotiations, permits countries to give food safety requirements priority over trade when those requirements are based on valid scientific information.

4. One comment from a trade association representing bottled water manufacturers opposed FDA's proposal to adopt EPA's MCL for endrin as the allowable level in bottled water because EPA's level for endrin in public drinking water is higher than the existing allowable level for this contaminant in the bottled water quality standard. The comment argued that bottlers can and have met, without exception, the existing allowable level for endrin in bottled water, and thus, FDA should keep the more stringent allowable level for endrin in bottled water. The comment further argued that while it does not disagree with FDA's acknowledgment of EPA's risk assessment for contaminants, FDA should not weaken the bottled water quality standard merely because EPA has established less stringent level for public water utilities based on their technical limitations.

FDA rejects the comment's call to retain the existing allowable level for endrin in the bottled water quality standard that is lower than the EPA's MCL for endrin in public drinking water. In the past, in similar circumstances where FDA had proposed to establish allowable levels for contaminants in bottled water based upon EPA's MCL's that were less stringent than existing allowable levels, FDA has concluded (see e.g. 59 FR 61529 at 61531, December 1, 1994) that its general policy of adopting EPA's MCL's for chemical contaminants as allowable levels in bottled water (where bottled water may be expected to contain the contaminants at issue (58 FR 41612 at 41613, August 4, 1993)) is appropriate because it will protect the public health, maintain consistent standards for identical contaminants in bottled water and public drinking water, prevent duplication of efforts between FDA and EPA in evaluating the effects of contaminants in drinking water, and not foster public perception that bottled water is required to be of better quality than tap water. This continues to be the agency's position. Therefore, for these reasons, FDA is adopting EPA's MCL's for endrin as the allowable level in the quality standard for bottled water.

In conclusion, the majority of the comments to the August 1993 proposal supported the proposed allowable levels for the 5 IOC's and 18 SOC's in the quality standard for bottled water. Further, the agency has addressed the comments that suggested modifications to or were opposed to various allowable levels in the proposal. With the exception of the comment pertaining to the proposed allowable level for DEHP (see comment 1 of this document), none of the comments have persuaded FDA that it should not adopt the allowable levels as proposed for the remaining chemical contaminants. The agency, therefore, is adopting the allowable levels for 22 of the 23 chemical contaminants (excluding DEHP) in the quality standard for bottled water as proposed (58 FR 41612).

C. Comments Related to Monitoring for Chemical Contaminants Under the Bottled Water CGMP Regulations

5. One comment from a nonprofit private organization stated that laboratory equipment (e.g., inductively coupled plasma-mass spectroscopy (ICP–MS)) for determining a number of trace elements such as antimony, beryllium, and nickel) addressed in this rulemaking is not available to a large number of laboratories because of the cost of such equipment. Further, the comment maintained that a limited number of laboratories exist that are qualified to perform many of the methods that FDA is proposing to adopt for measuring these chemical contaminants in bottled water. Consequently, the comment asserted that a large number of bottlers could be in violation of monitoring requirements for these contaminants because laboratories qualified to perform the analytical methods to determine these chemical contaminants may not be readily available.

FDA disagrees with this comment. In its July 1992 final rule (57 FR 31776 at 31798), that established NPDWR's for the chemical contaminants addressed in this final rule, EPA stated that selection of analytical methods for compliance monitoring of the chemical contaminants was based on the following factors: (1) Reliability (i.e., precision/accuracy) of the analytical results; (2) specificity in the presence of interferences; (3) availability of enough equipment and trained personnel to implement a national monitoring program (i.e., laboratory availability); (4) rapidity of analysis to permit routine use; and (5) cost of analysis to water supply systems.

Further, EPA stated in its July 1992 final rule (57 FR 31776 at 31799) that, although the ICP–MS technique for determining inorganic chemical contaminants (i.e., elements such as antimony, beryllium, and nickel) is not used widely, it expects that routine use of this equipment for determining trace elements in water samples will soon become the norm comparable to current routine laboratory use of gas chromatography/mass spectrometry (GC/MS) techniques for water analysis. In addition, EPA stated that, although the cost of the equipment is high, the capability of ICP–MS technique (i.e., high sensitivity, short analysis times, and multiple metal analytical capability) makes it a cost effective investment because of lower operational costs when compared to trace element determination with such techniques as conventional atomic absorption spectrophotometry. EPA concluded that the ICP–MS technique is technologically and economically feasible for routine compliance monitoring of water samples and adopted the technique for determining trace elements in water samples. Finally, EPA stated that the ICP–MS technique is one of many being approved for determining trace elements in water samples, and laboratories without ICP–MS technique capability may use other conventional methods.

Based on the factors discussed above (i.e., reliability, specificity, availability, rapidity) that EPA considered in adopting analytical methods for determining the levels in public drinking water of the 24 chemical contaminants that are the subject of this rulemaking, FDA concludes that

laboratories are readily available that are competent in performing the applicable analytical methods for the 22 chemical contaminants for which it is establishing allowable levels. FDA therefore rejects the comment's suggestion that a large number of bottlers could be in violation of the monitoring requirements for a number of the contaminants because laboratories qualified to perform the required analytical methods are not readily available.

6. Comments from a trade association representing bottled water manufacturers and from a nonprofit private organization maintained that, for nine of the chemical contaminants addressed in the proposal, namely the IOC's antimony, beryllium, cyanide, nickel, and thallium and the SOC's diquat, endothall, glyphosate, and dioxin, finalization of the proposed allowable levels would, under the CGMP requirements for bottled water (part 129), require additional analytical testing to be performed by water bottlers for monitoring purposes. Bottlers would have to test for these contaminants at least annually using methods other than those that are being used to analyze bottled water for compliance with the quality standard. The comment from the bottled water trade association stated that this additional testing would impose an additional cost of over one million dollars annually on bottlers. To ease the economic burden that would result from these testing requirements, the comments recommended that the agency adopt monitoring requirements for bottled water that are similar to EPA's monitoring requirements, which would allow bottlers to obtain waivers permitting them to monitor finished bottled water products for chemical contaminants less frequently than once per year if they can establish that a contaminant is not likely to be present in the source water for bottling or in the finished bottled water products.

However, comments from two State public health departments contended that water bottlers should continue to be required to test their products at least annually for chemical contaminants. One of these comments argued that the current minimum annual testing is essential, and that cost should not be a consideration, even for small bottling companies.

FDA recognizes that the number of chemical contaminants that bottlers must monitor under the bottled water CGMP regulations has increased substantially in recent years. FDA also recognizes that the increased monitoring requirements pose additional costs to water bottlers. Further, data submitted by one commenter that was obtained from a nonprofit private organization that offers testing services for the bottled water industry suggest that bottled water frequently would not be expected to contain detectable levels of the types of nonnaturally occurring contaminants regulated under the bottled water quality standard (i.e., pesticides and SOC's), and that the instances where such chemicals are detected are relatively few in number. Moreover, the levels of such contaminants, when found, are well below the allowable levels. The data also suggest that naturally occurring contaminants, e.g., IOC's, are frequently not found in bottled water, and that when they are found in bottled water, they do not exceed the allowable levels and, in fact, are usually found at levels well below the allowable levels.

For example, a 1990 analytical test summary showed that among a set of 97 bottled water products analyzed for 6 pesticide chemicals (endrin, lindane, methoxychlor, toxaphene, 2,4-D, and 2,4,5-TP), none tested positive for any of these 6 pesticide chemicals, i.e., no pesticide chemical was detected in 582 (i.e., 6×97) analyses. The analytical test summary also showed that among another set of 21 bottled water products analyzed for 11 different pesticide chemicals (simazine, atrazine, alachlor, heptachlor, chlordane, oxamyl, carbofuran, dalapon, pentachlorophenol, dinoseb, and picloram), none tested positive for any of these 11 pesticide chemicals, i.e., no pesticide chemical was detected in the 231 (i.e., 11×21) analyses. Further, in 1993, among 150 bottled water samples analyzed for the above 17 pesticide chemicals for which EPA has established MCL's, none showed the presence of any of these 17 pesticide chemicals, i.e., no pesticide chemical was detected in the 2,550 (i.e., 17×150) analyses.

In addition, the commenter submitted another 1990 analytical summary showing that among 97 bottled water products tested for 32 contaminants (18 IOC's, 11 nonpesticide SOC's, and 3 physical/quality attributes) for which FDA has established allowable levels in the bottled water quality standard, none contained any of these contaminants above the allowable levels. Nonpesticide SOC's were detected in 70 instances among the 1,067 (i.e., 11×97) analyses, but in no case did the level detected exceed 20 percent of the allowable level. Further, when testing was done for other types of contaminants (IOC's) and physical/quality attributes (e.g., odor, turbidity), such contaminants were not detected in 76 percent (i.e., 1,554 of 2,037) of the analyses, and in no case did a contaminant exceed the allowable level. Contaminants exceeding 50 percent of the allowable level were detected in only 12 instances among 2,037 analyses, and in all but 1 of these instances, the contaminants or physical/quality attributes that were detected (e.g., color, odor, TDS, iron, manganese) were those for which FDA has established allowable levels based on EPA's SMCL's to address the aesthetic effects, but not the health effects, of the contaminants. Contaminants exceeding 20 percent of the allowable level were detected in 100 instances among the 2,037 analyses, and in all but 6 of these instances, the contaminants or physical/quality attributes detected were those for which FDA has established allowable levels based on EPA's SMCL's.

In view of these facts, the commenter's suggestion that FDA adopt monitoring requirements for bottled water that are similar to EPA's monitoring requirements (i.e., that would allow bottlers to monitor finished bottled water products for chemical contaminants less frequently than once per year if they can establish that a contaminant is not likely to be present in the source water for bottling or in the finished bottled water products) merits consideration by the agency. However, any revision of the monitoring requirements for chemical contaminants in bottled water would require a careful consideration of all the relevant facts and an opportunity for input from all concerned parties. It would also require an amendment of the bottled water CGMP regulations. As such, it is beyond the scope of this rulemaking. This rulemaking only addresses the allowable levels for certain chemical contaminants in the quality standard for bottled water.

FDA intends to initiate rulemaking to address the issue of the circumstances in which reduced frequency of monitoring for chemical contaminants in bottled water products is appropriate. This rulemaking will consider the issues raised in the comments from the State health department summarized above. However, the agency's ability to undertake this rulemaking expeditiously will depend on the availability of agency resources and other competing priorities, particularly those of a significant public health concern.

As discussed above, FDA is adopting the allowable levels for 22 of 23 chemical contaminants (excluding DEHP) in the quality standard for bottled water as proposed (58 FR 41612). However, given the cost of testing for the nine chemical

contaminants in question (antimony, beryllium, cyanide, nickel, thallium, diquat, endothall, glyphosate, and dioxin), and the fact that the comments have submitted data showing that it is unlikely that IOC's, SOC's, and pesticide contaminants will be found in bottled water at levels that would pose a quality or safety concern, FDA finds that it is in the public interest and in the interest of justice to stay the effective date of the allowable levels for these nine comtaminants, in accordance with 21 CFR 10.35(e). FDA is staying the effect of these allowable levels until it has completed a rulemaking to address the issue of reduced frequency monitoring for chemical contaminants in bottled water. As a result of this action, bottlers are not required to monitor source waters and finished bottled water products annually for these nine chemical contaminants at this time.

FDA, however, reminds water bottlers that they are responsible for ensuring that all bottled water products introduced or delivered for introduction into interstate commerce are safe, wholesome, and appropriately labeled. Moreover, any bottled water containing any substance (including any of the nine chemical contaminants for which the allowable levels are being stayed) at a level that may be injurious to health under section 402 of the act is adulterated and will be subject to regulatory action. Consequently, FDA advises water bottlers to ensure through appropriate manufacturing techniques and sufficient quality control procedures that their bottled water products are safe with respect to levels of these nine chemical contaminants.

III. Conclusion

The agency is adopting the provisions concerning allowable levels for 22 of the 23 chemical contaminants (excluding DEHP) in the quality standard for bottled water as proposed (58 FR 41612). However, FDA is staying the effective date of the allowable levels for nine of these chemical contaminants (five IOC's and four SOC's) for the reasons explained in the response to comment 6 of this document. Further, as explained in response to comment 1 of this document, FDA is deferring final action on the proposed allowable level for the nonpesticide chemical DEHP.

The majority of the comments to the August 1993 proposal supported the provisions concerning allowable levels that FDA is adopting in this final rule. Further, after carefully considering the comments that the agency received that suggested modifications to, or that were opposed to, various provisions of the proposal, the agency has determined that no changes in the final rule other than those discussed in the response to comment 6 of this document concerning staying of the effective date for 9 of the 23 contaminants and in response to comment 1 of this document concerning deferring final action on DEHP are warranted.

In the November 1995 final rule that established a standard of identity for bottled water, FDA moved the standard of quality for bottled water from § 103.35 (21 CFR 103.35) to § 165.110. Therefore, the provisions that are being added to the quality standard in this final rule are being codified under § 165.110 and not under § 103.35 (as was proposed), which has been superseded.

With respect analytical methods for the determination of chemical contaminants, FDA is making the following changes in 165.110(b)(4)(iii).

In § 165.110(b)(4)(iii)(E)(*1*)(*iv*), FDA cites the updated version of proposed Method D–3697–87 (i.e., Method D–3697–92), and in § 165.110(b)(4)(iii)(E)(*7*)(*iv*), FDA cites the updated version of proposed Method D–2036–89A (i.e., Method D–2036–91).

These methods are contained in the manual entitled ''Annual Book of ASTM Standards,'' vols. 11.01 and 11.02, 1995, American Society for Testing and Materials (ASTM), 100 Barr Harbor Dr., West Conshoocken, PA 19428, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The source for the manual containing the two methods is the American Society for Testing and Materials. FDA is adopting the updated versions of the two methods because the proposed older versions (i.e., Method D–3697–87 and Method D–2036–89A) are contained in the 1991 edition of the manual entitled ''Annual Book of ASTM Standards,'' vols. 11.01 and 11.02, which the publisher has discontinued printing, and therefore, is no longer commercially available.

Further, FDA is deleting proposed § 103.35(d)(3)(v)(H)(5) that contains the analytical method, 4500–CN–F which is one of five methods that FDA proposed to adopt for determining cyanide in bottled water. FDA proposed to adopt Method 4500–CN–F that is contained in ''Standard Methods for the Examination of Water and Wastewater,'' 17th ed. (1989), published by the American Public Health Association, Washington, DC. However, the publisher has discontinued printing the 1989 edition of the Standard Methods for the Examination of Water and Wastewater. Consequently, the 1989 version of Method 4500–CN–F is no longer commercially available. Therefore, because the 1989 version of Method 4500–CN–F is no longer commercially available, and because FDA is incorporating by reference four other methods (three EPA methods and one ASTM method) for determining cyanide in bottled water, FDA is not adopting Method 4500–CN–F.

Finally, FDA is consolidating and relisting in alphabetical order all of the appropriate analytical methods that the agency either previously incorporated by reference or is incorporating by reference in this final rule in recodified § 165.110(b)(4)(iii)(E), (b)(4)(iii)(F), and (b)(4)(iii)(G).

Therefore, upon the effective date of this rule, September 23, 1996, any bottled water that contains any of the 13 chemical contaminants for which the allowable levels are effective at a level that exceeds the applicable allowable levels will be misbranded under section 403(h)(1) of the act (21 U.S.C. 343(h)(1)) unless it bears a statement of substandard quality as provided by § 165.110(c)(3).

IV. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the proposed rule (58 FR 41612, August 4, 1993). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

V. Analysis of Economic Impacts

FDA has examined the impacts of this final rule which amends the quality standard for bottled water by establishing or revising allowable levels for 5 IOC's and 17 SOC's (excluding DEHP) as required by Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–654). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity).

The Regulatory Flexibility Act requires analyzing options for regulatory relief for small businesses. FDA finds that this final rule is not a significant regulatory action as defined by Executive Order 12866. In compliance with the Regulatory Flexibility Act, the agency certifies that the final rule will

not have a significant impact on a substantial number of small businesses.

A. Costs

In the August 1993 proposal, FDA presented an analysis of the economic impact of the proposed requirements under the previous Executive Order 12291. In that analysis, the agency stated that the benefits of the proposed rule are expected to be zero because none of the 23 chemicals found in currently marketed bottled water are expected to be above the levels of the proposed standard. FDA also stated that the costs of this regulation will only be for testing of these chemicals according to the CGMP regulations for bottled water. A single test can be used to simultaneously analyze a number of chemicals and can cost up to $3,000 per sample. To the extent that the tests currently being performed can be used to test for any of the 23 chemicals, there would be no additional costs imposed by this rule.

As mentioned above, in response to that analysis the agency received two comments, one from a trade association representing bottled water manufacturers and one from a nonprofit private organization. One of the comments stated that, under the proposal, 14 contaminants may be analyzed using methods that can simultaneously test for a number of currently regulated chemicals, and that no additional testing cost would be required. However, the other nine of these chemicals would require additional testing, which would increase costs for each bottled water product by $1,290 per sample, and by another $1,290 for each nonmunicipal source. In the United States there are 1,000 to 1,100 bottled water products that under the proposed requirements would require additional testing (Ref. 1). The incremental annual costs to bottlers would then range between $1.29 to $1.419 million for additional testing of the finished bottled water products (i.e., $1,290×1,000 to 1,100 bottled water products). The number of nonmunicipal sources affected is not known, but assuming that, on average, 50 percent of the total bottled water products are from nonmunicipal sources, the cost of the additional testing would be $1,290 × 500 nonmunicipal sources or $645,000 annually. The total annual costs of additional testing would be approximately $2 million.

According to a trade association comment, approximately 140 of their member bottlers are considered small or have sales that are below $1 million. These 140 small bottlers represent approximately half of the small bottlers in the country (Ref. 1). On average, each small bottler produces two products. Thus the incremental annual cost to small bottlers is estimated as 280 bottlers × 2 products × $1,290, which would be equal to $722,400. The total future discounted costs (6 percent) to small businesses would be $12 million.

In addition, as mentioned above (see response to comment 6 of this document, *supra*), 1990 and 1993 data from a nonprofit private organization that offers testing services for the bottled water industry suggest that bottled water frequently may not be expected to contain detectable levels of the types of nonnaturally occurring contaminants regulated under the bottled water quality standard (e.g., pesticides and SOC's), and that the instances where such chemicals may be detected are relatively few in number. The data also show that the levels of such contaminants, when found, are well below the allowable levels. FDA has also received data that suggest that some types of contaminants, e.g., IOC's, are frequently not found in bottled water and, when found in bottled water, do not exceed the allowable levels and are usually found at levels well below the allowable levels. For these reasons, the comment suggested that FDA provide waivers similar to those provided by EPA that would allow less frequent monitoring of contaminants not likely to be found in bottled water. Although this suggestion warrants consideration by the agency, any revision of the monitoring requirements for chemical contaminants in bottled water would require amending the bottled water CGMP regulations. An amendment of CGMP regulations is beyond the scope of this rulemaking.

As mentioned earlier, FDA intends to initiate rulemaking to address the issue of reduced frequency monitoring for chemicals that are unlikely to be present in bottled water. However, the agency's ability to undertake such rulemaking expeditiously will depend on the availability of agency resources and other competing priorities, particularly for those that pose significant public health concerns. Therefore, as explained above, FDA decided to finalize the allowable levels for the nine contaminants that cannot be analyzed with currently used methods but to stay the effective date for these allowable levels until it undertakes a rulemaking on reduced frequency monitoring for chemical contaminants in bottled water. Thus, while stayed, this rule results in no additional testing costs for these nine contaminants.

To assess the minimum expected cost of this rule if the monitoring frequency requirements in the CGMP are reduced, FDA assumes that any revision of the CGMP would require at least initial testing for the nine contaminants for which the allowable levels are being stayed. The cost for this initial testing for 1,000 to 1,100 bottled water products and 500 nonmunicipal sources would be approximately $2 million as stated above. This is the minimum expected cost since additional testing (at less frequent intervals) still would be required after the initial testing. No reformulation costs are expected because none of the 23 contaminants are found in bottled water above the levels of the proposed standard.

B. Benefits

In the Economic Impact Analysis of the proposed rule FDA determined that, because none of the 23 contaminants are expected to be found in bottled water above the levels of the standards, benefits of the proposed rule were expected to be zero. However, this rule ensures that, should current conditions change, such as new sources of water or new manufacturing practices, the level of these contaminants will remain low. Although the health benefits of this regulation are expected to be small, regulation similar to that for municipal water may improve consumer perceptions of the risk associated with bottled water, particularly relative to municipal water.

VI. Reference

The following reference has been place on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20875, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum of telephone conversation to Tyrone Wilson of the International Bottled Water Association (IBWA), from Christinia Ford, (FDA), September 7, 1995.

List of Subjects in 21 CFR Part 165

Beverages, Bottled water, Food grades and standards, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 165 is amended as follows:

PART 165—BEVERAGES

1. The authority citation for 21 CFR part 165 continues to read as follows:

Authority: Secs. 201, 401, 403, 403A, 409, 410, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 343A, 348, 349, 371, 379e).

2. Section 165.110 is amended in the table in paragraph (b)(4)(i)(A) by removing the entries for ''Sulfate'' and ''Endrin * * *'', by alphabetically adding new entries in the tables in paragraphs (b)(4)(iii)(A), (b)(4)(iii)(B), (b)(4)(iii)(C), and (b)(4)(iii)(D), and by revising paragraphs (b)(4)(iii)(E), (b)(4)(iii)(F), and (b)(4)(iii)(G) to read as follows:

§ 165.110 Bottled water.

* * * * *

(b) * * *

(4) * * *

(iii) * * *

(A) * * *

Contaminant	Concentration in milligrams per liter (or as specified)
Antimony [1]	.006
* * * * * *	*
Beryllium [1]	0.004
* * * * * *	*
Cyanide [1]	0.2
* * * * * *	*
Nickel [1]	0.1
* * * * * *	*
Thallium [1]	0.002
* * * * * *	*

[1] Stayed until further notice. See § 165.110(b)(4)(iii) (G)(*3*)(*iv*).

(B) * * *

Contaminant (CAS Reg. No.)	Concentration in milligrams per liter
* * * * * *	*
Dichloromethane (75–09–2)	0.005
* * * * * *	*
1,2,4–Trichlorobenzene (120–82–1)	0.07
* * * * * *	*
1,1,2–Trichloroethane (79–00–5)	0.005
* * * * * *	*

(C) * * *

Contaminant (CAS Reg. No.)	Concentration in milligrams per liter
* * * * * *	*
Benzo(a)pyrene (50–32–8)	0.0002
* * * * * *	*
Dalapon (75–99–0)	0.2
* * * * * *	*
* * * * * *	*
Di(2-ethylhexyl)adipate (103–23–1)	0.4
Dinoseb (88–85–7)	0.007
Diquat (85–00–7)[1]	0.02
Endothall (145–73–3) [1]	0.1
Endrin (72–20–8)	0.002
* * * * * *	*
Glyphosate (1071–53–6) [1]	0.7
* * * * * *	*
Hexachlorobenzene (118–74–4)	0.001
Hexachlorocyclopentadiene (77–47–4)	0.05

Contaminant (CAS Reg. No.)	Concentration in milligrams per liter
* * * * * * *	
Oxamyl (23135–22–0)	0.2
* * * * * * *	
Picloram (1918–02–1)	0.5
Simazine (122–34–9)	0.004
2,3,7,8-TCDD (Dioxin) (1746–01–6) [1]	3×10^{-8}
* * * * * * *	

[1] Stayed until further notice. See § 165.110(b)(4)(iii) (G)(*3*)(*iv*).

(D) * * *

Contaminant	Concentration in milligrams per liter
* * * * * * *	
Sulfate [1]	250.0

[1] Mineral water is exempt from allowable level. The exemptions are aesthetically based allowable levels and do not relate to a health concern.

(E) Analyses to determine compliance with the requirements of paragraph (b)(4)(iii)(A) of this section shall be conducted in accordance with an applicable method and applicable revisions to the methods listed in paragraphs (b)(4)(iii)(E)(*1*) through (b)(4)(iii)(E)(*13*) of this section and described, unless otherwise noted, in ''Methods for Chemical Analysis of Water and Wastes,'' U.S. EPA Environmental Monitoring and Support Laboratory (EMSL), Cincinnati, OH 45258 (EPA–600/4–79–020), March 1983, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this publication are available from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5825 Port Royal Rd., Springfield, VA 22161, or may be examined at the Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 200 C Street SW., Washington, DC 20204, or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(*1*) Antimony shall be measured using the following methods:

(*i*) Method 204.2—''Atomic Absorption; furnace technique,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E) of this section.

(*ii*) Method 200.8—''Determination of Trace Elements in Water and Wastes by Inductively Coupled Plasma-Mass Spectrometry,'' Rev. 4.4, April 1991, U.S. EPA, EMSL. The revision is contained in the manual entitled ''Methods for the Determination of Metals in Environmental Samples,'' Office of Research and Development, Washington, DC 20460, (EPA/600/4–91/010), June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this publication are available from the National Technical Information Service, U.S. Department of Commerce, 5825 Port Royal Rd., Springfield, VA 22161, or may be examined at the Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 200 C Street SW., Washington, DC 20204, or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(*iii*) Method 200.9—''Determination of Trace Elements by Stabilized Temperature Graphite Furnace Atomic Absorption Spectrometry,'' Rev. 1.2, April 1991, U.S. EPA, EMSL. The revision is contained in the manual entitled ''Methods for the Determination of Metals in Environmental Samples,'' Office of Research and Development, Washington, DC 20460, (EPA/600/4–91/010), June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*1*)(*ii*) of this section.

(*iv*) Method D–3697–92—''Standard Test Method for Antimony in Water,'' contained in the Annual Book of ASTM Standards, vols. 11.01 and 11.02, 1995, American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this publication are available from American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428, or may be examined at the Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 200 C Street SW., Washington, DC 20204, or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(*2*) Barium shall be measured using the following methods:

(*i*) Method 208.2—''Atomic Absorption; furnace technique,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*ii*) Method 208.1—''Atomic Absorption; direct aspiration,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E) of this section.

(*iii*) Method 200.7—''Determination of Metals and Trace Elements in Water and Wastes by Inductively Coupled Plasma-Atomic Emission Spectrometry,'' Rev. 3.3, April 1991, U.S. EPA, EMSL. The revision is contained in the manual entitled ''Methods for the Determination of Metals in Environmental Samples,''

Office of Research and Development, Washington, DC 20460, (EPA/600/4–91/010), June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*1*)(*ii*) of this section.

(*3*) Beryllium shall be measured using the following methods:

(*i*) Method 210.2—''Atomic Absorption; Furnace Technique,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E) of this section.

(*ii*) Method 200.7—''Determination of Metals and Trace Elements in Water and Wastes by Inductively Coupled Plasma-Atomic Emission Spectrometry,'' Rev. 3.3, April 1991, U.S. EPA, EMSL. The revision is contained in the manual entitled ''Methods for the Determination of Metals in Environmental Samples,'' Office of Research and Development, Washington, DC 20460, (EPA/600/4–91/010), June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*1*)(*ii*) of this section.

(*iii*) Method 200.8—''Determination of Trace Elements in Water and Wastes by Inductively Coupled Plasma-Mass Spectrometry,'' Rev. 4.4, April 1991, U.S. EPA, EMSL. The revision is contained in the manual entitled ''Methods for the Determination of Metals in Environmental Samples,'' Office of Research and Development, Washington, DC 20460, (EPA/600/4–91/010), June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*1*)(*ii*) of this section.

(*iv*) Method 200.9—''Determination of Trace Elements by Stabilized Temperature Graphite Furnace Atomic Absorption Spectrometry,'' Rev. 1.2, April 1991, U.S. EPA, EMSL. The revision is contained in the manual entitled ''Methods for the Determination of Metals in Environmental Samples,'' Office of Research and Development, Washington, DC 20460, (EPA/600/4–91/010), June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*1*)(*ii*) of this section.

(*4*) Cadmium shall be measured using the following methods:

(*i*) Method 213.2—''Atomic Absorption; Furnace Technique,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E) of this section.

(*ii*) Method 200.7—''Determination of Metals and Trace Elements in Water and Wastes by Inductively Coupled Plasma-Atomic Emission Spectrometry,'' Rev. 3.3, April 1991, U.S. EPA, EMSL. The revision is contained in the manual entitled ''Methods for the Determination of Metals in Environmental Samples,'' Office of Research and Development, Washington, DC 20460, (EPA/600/4–91/010), June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*1*)(*ii*) of this section.

(*5*) Chromium shall be measured using the following methods:

(*1*) Method 218.2—''Atomic Absorption; furnace technique,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E) of this section.

(*2*) Method 200.7—''Determination of Metals and Trace Elements in Water and Wastes by Inductively Coupled Plasma-Atomic Emission Spectrometry,'' Rev. 3.3, April 1991, U.S. EPA, EMSL. The revision is contained in the manual entitled ''Methods for the Determination of Metals in Environmental Samples,'' Office of Research and Development, Washington, DC 20460, (EPA/600/4–91/010), June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*1*)(*ii*) of this section.

(*6*) Copper shall be measured as total recoverable metal without filtration using the following methods:

(*i*) Method 220.2—''Atomic Absorption; furnace technique,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*ii*) Method 220.1—''Atomic Absorption; direct aspiration,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of these incorporation by reference is given in paragraph (b)(4)(iii)(E) of this section.

(*iii*) Method 200.7—''Determination of Metals and Trace Elements in Water and Wastes by Inductively Coupled Plasma-Atomic Emission Spectrometry,'' Rev. 3.3, April 1991, U.S. EPA, EMSL. The revision is contained in the manual entitled ''Methods for the Determination of Metals in Environmental Samples,'' Office of Research and Development, Washington, DC 20460, (EPA/600/4–91/010), June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*1*)(*ii*) of this section.

(*iv*) Method 200.8—''Determination of Trace Elements in Water and Wastes by Inductively Coupled Plasma-Mass Spectrometry,'' Rev. 4.4, April 1991, U.S. EPA, EMSL. The revision is contained in the manual entitled ''Methods for the Determination of Metals in Environmental Samples,'' Office of Research and Development, Washington, DC 20460, (EPA/600/4–91/010), June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(1)(*ii*) of this section.

(*v*) Method 200.9—''Determination of Trace Elements by Stabilized Temperature Graphite Furnace Atomic Absorption Spectrometry,'' Rev. 1.2, April 1991, U.S. EPA, EMSL. The revision is contained in the manual entitled ''Methods for the Determination of Metals in Environmental Samples,'' Office of Research and Development, Washington, DC 20460, (EPA/600/4–91/010), June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*1*)(*ii*) of this section.

(*7*) Cyanide shall be measured using the following methods:

(*i*) Method 335.1—''Titrimetric; Spectrophotometric'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*ii*) Method 335.2—''Titrimetric; Spectrophotometric'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*iii*) Method 335.3—''Colorimetric, Automated UV,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of these incorporation by reference is given in paragraph (b)(4)(iii)(E) of this section.

(iv) Method D–2036–91—''Standard Test Methods for Cyanides in Water,'' contained in the Annual Book of ASTM Standards, vols. 11.01 and 11.02, 1995, American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this publication are available

from American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428, or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C Street SW., Washington, DC 20204, or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(*8*) Lead shall be measured as total recoverable metal without filtration using the following methods:

(*i*) Method 239.2—''Atomic Absorption; furnace technique,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E) of this section.

(*ii*) Method 200.8—''Determination of Trace Elements in Water and Wastes by Inductively Coupled Plasma-Mass Spectrometry,'' Rev. 4.4, April 1991, U.S. EPA, EMSL. The revision is contained in the manual entitled ''Methods for the Determination of Metals in Environmental Samples,'' Office of Research and Development, Washington, DC 20460, (EPA/600/4–91/010), June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*1*)(*ii*) of this section.

(*iii*) Method 200.9—''Determination of Trace Elements by Stabilized Temperature Graphite Furnace Atomic Absorption Spectrometry,'' Rev. 1.2, April 1991, U.S. EPA, EMSL. The revision is contained in the manual entitled ''Methods for the Determination of Metals in Environmental Samples,'' Office of Research and Development, Washington, DC 20460, (EPA/600/4–91/010), June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*1*)(*ii*) of this section.

(*9*) Mercury shall be measured using the following methods:

(*i*) Method 245.1—''Manual cold vapor technique,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*ii*) Method 245.2—''Automated cold vapor technique,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of these incorporation by reference is given in paragraph (b)(4)(iii)(E) of this section.

(*10*) Nickel shall be measured using the following methods:

(*i*) Method 249.1—''Atomic Absorption; direct aspiration,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*ii*) Method 249.2—''Atomic Absorption; furnace technique,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of these incorporation by reference is given in paragraph (b)(4)(iii)(E) of this section.

(*iii*) Method 200.7—''Determination of Metals and Trace Elements in Water and Wastes by Inductively Coupled Plasma-Atomic Emission Spectrometry,'' Rev. 3.3, April 1991, U.S. EPA, EMSL. The revision is contained in the manual entitled ''Methods for the Determination of Metals in Environmental Samples,'' Office of Research and Development, Washington, DC 20460, (EPA/600/4–91/010), June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*1*)(*ii*) of this section.

(*iv*) Method 200.8—''Determination of Trace Elements in Water and Wastes by Inductively Coupled Plasma-Mass Spectrometry,'' Rev. 4.4, April 1991, U.S. EPA, EMSL. The revision is contained in the manual entitled ''Methods for the Determination of Metals in Environmental Samples,'' Office of Research and Development, Washington, DC 20460, (EPA/600/4–91/010), June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*1*)(*ii*) of this section.

(*v*) Method 200.9—''Determination of Trace Elements by Stabilized Temperature Graphite Furnace Atomic Absorption Spectrometry,'' Rev. 1.2, April 1991, U.S. EPA, EMSL. The revision is contained in the manual entitled ''Methods for the Determination of Metals in Environmental Samples,'' Office of Research and Development, Washington, DC 20460, (EPA/600/4–91/010), June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*1*)(*ii*) of this section.

(*11*) Nitrate and/or nitrite shall be measured using the following methods:

(*i*) Method 300.0—''The Determination of Inorganic Anions in Water by Ion Chromatography—Method 300.0,'' EPA, EMSL (EPA–600/4–84–017), March 1984, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this publication are available from NTIS, U.S. Department of Commerce, 5825 Port Royal Rd., Springfield, VA 22161, or may be examined at the Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 200 C Street SW., Washington, DC 20204, or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(*ii*) Method 353.1—''Colorimetric, automated, hydrazine reduction,'' for nitrate only, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*iii*) Method 353.2—''Colorimetric, automated, cadmium reduction,'' for both nitrate and nitrite, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*iv*) Method 353.3—''Spectrophotometric, cadmium reduction,'' for both nitrate and nitrite, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*12*) Selenium shall be measured using the following methods:

(*i*) Method 270.2—''Atomic Absorption; furnace technique,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*ii*) Method 270.3—''Atomic Absorption; gaseous hydride,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E) of this section.

(*13*) Thallium shall be measured using the following methods:

(*i*) Method 279.2—''Atomic Absorption; furnace technique,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E) of this section.

(*ii*) Method 200.8—''Determination of Trace Elements in Water and Wastes by Inductively Coupled Plasma-Mass Spectrometry,'' Rev. 4.4, April 1991, U.S. EPA, EMSL. The revision is contained in the manual entitled ''Methods for the Determination of Metals in Environmental Samples,'' Office of Research and Development, Washington, DC 20460, (EPA/600/4–91/010), June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*1*)(*ii*) of this section.

(*iii*) Method 200.9—''Determination of Trace Elements by Stabilized Temperature Graphite Furnace Atomic Absorption Spectrometry,'' Rev. 1.2, April 1991, U.S. EPA, EMSL. The revision is contained in the manual

entitled ''Methods for the Determination of Metals in Environmental Samples,'' Office of Research and Development, Washington, DC 20460, (EPA/600/4–91/010), June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*1*)(*ii*) of this section.

(F) Analyses to determine compliance with the requirements of paragraphs (b)(4)(iii)(B) and (b)(4)(iii)(C) of this section shall be conducted in accordance with an applicable method or applicable revisions to the methods listed in paragraphs (b)(4)(iii)(F)(*1*) through (b)(4)(iii)(F)(*20*) of this section and described, unless otherwise noted, in ''Methods for the Determination of Organic Compounds in Drinking Water,'' Office of Research and Development, EMSL, EPA/600/4–88/039, December 1988, or in ''Methods for the Determination of Organic Compounds in Drinking Water, Supplement 1,'' Office of Research and Development, EMSL, EPA/600/4–90/020, July 1990, which are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these publications are available from NTIS, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161, or may be examined at the Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 200 C St. SW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(*1*) Method 502.1—''Volatile Halogenated Organic Compounds in Water by Purge and Trap Gas Chromatography,'' Rev. 2.0, 1989, (applicable to VOC's), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*2*) Method 502.2—''Volatile Organic Compounds in Water by Purge and Trap Capillary Column Gas Chromatography with Photoionization and Electrolytic Conductivity Detectors in Series,'' Rev. 2.0, 1989, (applicable to VOC's), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*3*) Method 503.1—''Volatile Aromatic and Unsaturated Organic Compounds in Water by Purge and Trap Gas Chromatography,'' Rev. 2.0, 1989, (applicable to VOC's), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*4*) Method 524.1—''Measurement of Purgeable Organic Compounds in Water by Packed Column Gas Chromatography/Mass Spectrometry,'' Rev. 3.0, 1989, (applicable to VOC's), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*5*) Method 524.2—''Measurement of Purgeable Organic Compounds in Water by Capillary Column Gas Chromatography/Mass Spectrometry,'' Rev. 3.0, 1989, (applicable to VOC's), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*6*) Method 504—''1,2–Dibromoethane (EDB) and 1,2–Dibromo-3-Chloropropane (DBCP) in Water by Microextraction and Gas Chromatography,'' Rev. 2.0, 1989, (applicable to dibromochloropropane (DBCP) and ethylene dibromide (EDB)), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*7*) Method 505—''Analysis of Organohalide Pesticides and Commercial Polychlorinated Biphenyl (PCB) Products in Water by Microextraction and Gas Chromatography,'' Rev. 2.0, 1989, (applicable to alachlor, atrazine, chlordane, heptachlor, heptachlor epoxide, lindane, methoxychlor, toxaphene, endrin, hexachlorobenzene, hexachlorocyclopentadiene, simazine, and as a screen for PCB's), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*8*) Method 506—''Determination of Phthalate and Adipate Esters in Drinking Water by Liquid-Liquid Extraction or Liquid-Solid Extraction and Gas Chromatography with Photoionization Detection,'' applicable to di(2-ethylhexyl) adipate which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*9*) Method 507—''Determination of Nitrogen- and Phosphorus-Containing Pesticides in Water by Gas Chromatography with a Nitrogen-Phosphorus Detector,'' Rev. 2.0, 1989, (applicable to alachlor, atrazine, and simazine), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*10*) Method 508—''Determination of Chlorinated Pesticides in Water by Gas Chromatography with an Electron Capture Detector,'' Rev. 3.0, 1989, (applicable to chlordane, heptachlor, heptachlor epoxide, lindane, methoxychlor, toxaphene, endrin, hexachlorobenzene, and as a screen for PCB's), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*11*) Method 508A—''Screening for Polychlorinated Biphenyls by Perchlorination and Gas Chromatography,'' Rev. 1.0, 1989, (used to quantitate PCB's as decachlorobiphenyl if detected in methods 505 or 508 in paragraph (b)(4)(iii)(F)(*7*) or (b)(4)(iii)(F)(*9*) of this section, respectively, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*12*) Method 515.1—''Determination of Chlorinated Acids in Water by Gas Chromatography with an Electron Capture Detector,'' Rev. 5.0, 1991, (applicable to 2,4–D, 2,4,5–TP (Silvex), pentachlorophenol, dalapon, dinoseb, and picloram), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*13*) Method 525.1—''Determination of Organic Compounds in Drinking Water by Liquid-Solid Extraction and Capillary Column Gas Chromatography/Mass Spectrometry,'' Rev. 2.2, May 1991, (applicable to alachlor, atrazine, chlordane, heptachlor, heptachlor epoxide, lindane, methoxychlor, pentachlorophenol, benzo(a)pyrene, di(2-ethylhexyl) adipate, endrin, hexachlorobenzene, hexachlorocyclopentadiene, and simazine), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*14*) Method 531.1—''Measurement of N-Methylcarbamoyloximes and N-Methylcarbamates in Water by Direct Aqueous Injection HPLC with Post Column Derivatization,'' Rev. 3.0, 1989, (applicable to carbofuran and oxamyl (vydate)), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*15*) Method 547—''Determination of Glyphosate in Drinking Water by Direct-Aqueous-Injection HPLC, Post-Column Derivatization, and Fluorescence Detection,'' (applicable to glyphosate), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*16*) Method 548—''Determination of Endothall in Drinking Water by Aqueous Derivatization, Liquid-Solid Extraction, and Gas Chromatography with Electron-Capture Detection,'' (applicable to endothall), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*17*) Method 549—''Determination of Diquat and Paraquat in Drinking Water by Liquid-Solid Extraction and HPLC with Ultraviolet Detection,'' (applicable to diquat), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*18*) Method 550—''Determination of Polycyclic Aromatic Hydrocarbons in Drinking Water by Liquid-Liquid Extraction and HPLC with Coupled Ultraviolet and Fluorescence Detection,'' (applicable to benzo(a)pyrene and other polynuclear aromatic hydrocarbons), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*19*) Method 550.1—''Determination of Polycyclic Aromatic Hydrocarbons in Drinking Water by Liquid-Solid Extraction and HPLC with Coupled Ultraviolet and Fluorescence Detection,'' (applicable to benzo(a)pyrene and other polynuclear aromatic hydrocarbons), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of these incorporation by reference is given in paragraph (b)(4)(iii)(F) of this section.

(*20*) Method 1613—''Tetra- through Octa- Chlorinated Dioxins and Furans by Isotope Dilution HRGC/HRMS,'' Rev. A, 1990, EPA, Office of Water Regulations and Standards, Industrial Technology Division, (applicable to 2,3,7,8–TCDD (Dioxin)), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this publication are available from USEPA–OST, Sample Control Center, P.O. Box 1407, Alexandria, VA 22313, or may be examined at the Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 200 C St. SW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(G) Analyses to determine compliance with the requirements of paragraph (b)(4)(iii)(D) of this section shall be conducted in accordance with an applicable method and applicable revisions to the methods listed in paragraphs (b)(4)(iii)(G)(*1*) through (b)(4)(iii)(G)(*3*) of this section and described, unless otherwise noted, in ''Methods of Chemical Analysis of Water and Wastes,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E) of this section.

(*1*) Aluminum shall be measured using the following methods:

(*i*) Method 202.1—''Atomic Absorption; direct aspiration technique,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*ii*) Method 202.2—''Atomic Absorption; furnace technique,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E).

(*iii*) Method 200.7—''Determination of Trace Elements in Water and Wastes by Inductively Coupled Plasma-Atomic Emission Spectrometry,'' Rev. 3.3, April 1991, U.S. EPA, EMSL. The revision is contained in the manual entitled ''Methods for the Determination of Metals in Environmental Samples,'' Office of Research and Development, Washington, DC 20460, (EPA/600/4–91/010), June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*1*)(*ii*) of this section.

(*iv*) Method 200.8—''Determination of Trace Elements in Water and Wastes by Inductively Coupled Plasma-Mass Spectrometry,'' Rev. 4.4, April 1991, U.S. EPA, EMSL. The revision is contained in the manual entitled ''Methods for the Determination of Metals in Environmental Samples,'' Office of Research and Development, Washington, DC 20460, (EPA/600/4–91/010), June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*1*)(*ii*) of this section.

(*v*) Method 200.9—''Determination of Trace Elements by Stabilized Temperature Graphite Furnace Atomic Absorption Spectrometry,'' Rev. 1.2, April 1991, U.S. EPA, EMSL. The revision is contained in the manual entitled ''Methods for the Determination of Metals in Environmental Samples,'' Office of Research and Development, Washington, DC 20460, (EPA/600/4–91/010), June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*1*)(*ii*) of this section.

(*2*) Silver shall be measured using the following methods:

(*i*) Method 272.1—''Atomic Absorption; direct aspiration technique,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*ii*) Method 272.2—''Atomic Absorption; furnace technique,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E) of this section.

(*iii*) Method 200.7—''Determination of Trace Elements in Water and Wastes by Inductively Coupled Plasma-Atomic Emission Spectrometry,'' Rev. 3.3, April 1991, U.S. EPA, EMSL. The revision is contained in the manual entitled ''Methods for the Determination of Metals in Environmental Samples,'' Office of Research and Development, Washington, DC 20460, (EPA/600/4–91/010), June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*1*)(*ii*) of this section.

(*iv*) Method 200.8—''Determination of Trace Elements in Water and Wastes by Inductively Coupled Plasma-Mass Spectrometry,'' Rev. 4.4, April 1991, U.S. EPA, EMSL. The revision is contained in the manual entitled ''Methods for the Determination of Metals in Environmental Samples,'' Office of Research and Development, Washington, DC 20460, (EPA/600/4–91/010), June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*1*)(*ii*) of this section.

(*v*) Method 200.9—''Determination of Trace Elements by Stabilized Temperature Graphite Furnace Atomic Absorption Spectrometry,'' Rev. 1.2, April 1991, U.S. EPA, EMSL. The revision is contained in the manual entitled ''Methods for the Determination of Metals in Environmental Samples,'' Office of Research and Development, Washington, DC 20460, (EPA/600/4–91/010), June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of these incorporation by reference is given in paragraph (b)(4)(iii)(E)(*1*)(*ii*) of this section.

(*3*) Sulfate shall be measured using the following methods:

(*i*) Method 300.0—''The Determination of Inorganic Anions in Water by Ion Chromatography—Method 300.0,'' EPA, EMSL (EPA–600/4–84–017), March 1984, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*11*)(*i*) of this section.

(*ii*) Method 375.1—''Colorimetric, Automated, Chloranilate,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*iii*) Method 375.3—''Gravimetric,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*iv*) Method 375.4—''Turbidimetric,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1

CFR part 51. The availability of these incorporation by reference is given in paragraph (b)(4)(iii)(E) of this section.

[Note: the allowable levels in § 165.110 for the chemicals antimony, beryllium, cyanide, nickel, thallium, diquat, endothall, glyphosate, and dioxin are stayed until further notice.]

* * * * * *

Dated: March 18, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–6940 Filed 3–25–96; 8:45 am]

BILLING CODE 4160–01–P

federal register

Tuesday
March 26, 1996

Part IV

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 10 and 966

Public Housing Lease and Grievance Procedures; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 10 and 966

[Docket No. FR–3819–F–02]

RIN 2501–AB92

Public Housing Lease and Grievance Procedures

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: On May 22, 1995 (60 FR 27058), HUD published a rule for public comment proposing to amend its regulations governing public notice and comment requirements and public housing lease and grievance procedures. This rule finalizes the policies set forth in the May 22, 1995 proposed rule. Specifically, this final rule clarifies that HUD is not required to use notice and comment rulemaking for issuance of a due process determination. This rule also authorizes Public Housing Agencies (PHAs) to bypass judicial eviction procedures, if the law of the jurisdiction permits eviction through administrative action. Additionally, this final rule corrects a typographical error currently contained in 24 CFR part 966.

EFFECTIVE DATE: April 25, 1996.

FOR FURTHER INFORMATION CONTACT: Linda Campbell, Director, Occupancy Division, Room 4206, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410; Telephone numbers (202) 708–0744; 1–800–877–8339 (Federal Information Relay Service TTY). (Other than the ''800'' number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

A. The May 22, 1995 Proposed Rule

On May 22, 1995 (60 FR 27058), HUD published for public comment a rule proposing to revise HUD's regulations at 24 CFR part 10, governing public notice and comment requirements, and 24 CFR part 966, governing public housing lease and grievance procedures.

Under 42 U.S.C. 1437d(k), a housing authority is generally required to provide a tenant with the opportunity for an administrative hearing before the commencement of eviction proceedings in the local landlord-tenant courts. The statute and HUD's implementing regulations at 24 CFR part 966 state that for certain criminal-related evictions the housing authority may bypass the administrative hearing. However, HUD must first make a determination that local law requires a pre-eviction court hearing that provides the basic elements of due process.

In HUD's view, the issuance of a due process determination is not a rule, and is therefore not subject to 24 CFR part 10's notice and comment rulemaking requirements. However, in its decision in *Yesler Terrace Community Council* v. *Cisneros*, the Ninth Circuit held that the due process determination for the State of Washington was a rule to which part 10 applied. The *Yesler* decision has meant that Public Housing Agencies (PHAs) in the States comprising the Ninth Circuit cannot rely on the HUD due process determinations issued for those States. Even for jurisdictions outside the Ninth Circuit, the decision in the *Yesler* case will inevitably lead to dispute and litigation concerning the ability of PHAs to rely on a HUD due process determination. In order to remedy this serious situation, the May 22, 1995 rule proposed to amend part 10 to clarify that the issuance of a due process determination does not require prior public procedure.

The May 22, 1995 rule also proposed to amend 24 CFR part 966. The amendment would permit PHAs to evict without bringing a court action if the law of the jurisdiction permits eviction by administrative action, after a due process administrative hearing, but does not require a court determination of the rights and liabilities of the parties. This proposed amendment was designed to avoid the necessity for duplicative administrative and judicial hearings.

The May 22, 1995 proposed rule described in detail the amendments to 24 CFR parts 10 and 966.

B. Discussion of Public Comments on the May 22, 1995 Proposed Rule

The public comment period on the proposed rule expired on July 21, 1995. By close of business on that date, a total of 8 comments had been received. Six of the eight commenters expressed support for the May 22, 1995 proposed rule and urged its adoption without change. As a result of this positive public response, HUD has decided to adopt the May 22, 1995 proposed rule without change. A representative comment read:

> [Our organization] strongly supports the proposed amendments to regulations governing eviction from public and Indian housing * * *. Granting these administrative hearings to persons engaged in serious criminal activity slows down the eviction process considerably, adversely affecting the quality of life in our developments for law-abiding families * * *. We welcome the initiative taken by the Department of Housing and Urban Development * * *. This will provide support to the Housing Authorit[ies] in [their] efforts to expeditiously evict persons engaged in criminal activities.

The other two commenters were opposed to the proposed amendment to part 966 which would permit certain PHAs to evict through administrative action. Both commenters believed that the proposed rule, by authorizing non-judicial evictions, would eliminate vital protections of the tenant's rights. For example, the commenters worried about the lack of a legally trained, impartial, presiding officer at administrative hearings. The commenters were also concerned about the lack of subpoena power in administrative eviction actions.

HUD, while recognizing that there are substantive differences between administrative and judicial proceedings, does not agree with the commenters. This final rules provides adequate safeguards against wrongful evictions. Only PHAs located in States which authorize administrative evictions will be able to bypass judicial eviction procedures. The administrative hearings will have to comply with Constitutional due process requirements, as well as the grievance hearing procedures set forth at 24 CFR part 966. Additionally, the administrative determinations will be subject to review by the State's courts.

C. Technical Correction of § 966.4(l)(3)(ii)

Paragraph (l)(3) of § 966.4 establishes the requirements for lease termination notices to public housing tenants. Paragraph (l)(3)(ii), which requires that the notice inform the tenant of the right to examine PHA documents directly relevant to the termination or eviction, contains a cross-reference to § 944.4(m). The cross-reference is incorrect, and should instead refer to § 966.4(m). This final rule makes the necessary correction.

II. Other Matters

A. Impact on the Environment

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this rule relate only to HUD administrative procedures and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

B. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has

determined that the policies contained in this final rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government.

This final rule clarifies that HUD is not required to use notice and comment rulemaking procedures for issuance of a due process determination. Furthermore, this rule permits PHAs to evict without bringing a court action, if the law of the jurisdiction permits eviction by administrative action and does not require a court determination of the rights and liabilities of the parties. This final rule will effect no changes in the current relationships between the Federal government, the States and their political subdivisions.

C. Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this final rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under this order. No significant change in existing HUD policies or programs will result from promulgation of this final rule, as those policies and programs relate to family concerns.

D. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605 (b)) has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant impact on a substantial number of small entities. This final rule merely concerns HUD's public housing lease and grievance procedures, and will not have any meaningful economic impact on any entity.

List of Subjects

24 CFR Part 10

Administrative practice and procedure.

24 CFR Part 966

Grant programs—housing and community development, Public housing.

Accordingly, 24 CFR parts 10 and 966 are amended as follows:

PART 10—RULEMAKING: POLICY AND PROCEDURES

1. The authority citation for part 10 is revised to read as follows:

Authority: 42 U.S.C. 3535(d).

2. Section 10.3 is amended by adding a new paragraph (c) to read as follows:

§ 10.3 Applicability.

* * * * *

(c) This part is not applicable to a determination by HUD under 24 CFR Part 966 (public housing) or 24 CFR Part 950 (Indian housing) that the law of a jurisdiction requires that, prior to eviction, a tenant be given a hearing in court which provides the basic elements of due process (''due process determination'').

PART 966—LEASE AND GRIEVANCE PROCEDURES

3. The authority citation for part 966 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437d *note*, and 3535(d).

4. Section 966.4 is amended by revising the first two sentences in paragraph (l)(3)(ii) and by revising paragraph (l)(4) to read as follows:

§ 966.4 Lease requirements.

* * * * *

(l) * * *

(3) * * *

(ii) The notice of lease termination to the tenant shall state specific grounds for termination, and shall inform the tenant of the tenant's right to make such reply as the tenant may wish. The notice shall also inform the tenant of the right (pursuant to § 966.4(m)) to examine PHA documents directly relevant to the termination or eviction. * * *

* * * * *

(4) *How tenant is evicted.* The PHA may evict the tenant from the unit either:

(i) By bringing a court action or;

(ii) By bringing an administrative action if law of the jurisdiction permits eviction by administrative action, after a due process administrative hearing, and without a court determination of the rights and liabilities of the parties. In order to evict without bringing a court action, the PHA must afford the tenant the opportunity for a pre-eviction hearing in accordance with the PHA grievance procedure.

* * * * *

5. In § 966.51, paragraph (a)(2) is amended by redesignating paragraph (a)(2)(ii) as paragraph (a)(2)(iv) and adding new paragraphs (a)(2)(ii) and (a)(2)(iii) to read as follows:

§ 966.51 Applicability.

(a) * * *

(2) * * *

(ii) The issuance of a due process determination by HUD is not subject to 24 CFR part 10, and HUD is not required to use notice and comment rulemaking procedures in considering or issuing a due process determination.

(iii) For guidance of the public, HUD will publish in the Federal Register a notice listing the judicial eviction procedures for which HUD has issued a due process determination. HUD will make available for public inspection and copying a copy of the legal analysis on which the determinations are based.

* * * * *

Dated: March 12, 1996.

Henry G. Cisneros,

Secretary.

[FR Doc. 96–7061 Filed 3–25–96; 8:45 am]

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federal register

Tuesday
March 26, 1996

Part V

Department of Housing and Urban Development

Public Housing Lease and Grievance Procedures; HUD Due Process Determinations; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–3998–N–01]

Office of the Assistant Secretary for Public and Indian Housing; Public Housing Lease and Grievance Procedures; Notice of HUD Due Process Determinations

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of HUD due process determinations.

SUMMARY: Under 42 U.S.C. 1437d(k), a housing authority is generally required to provide a public housing tenant with the opportunity for an administrative hearing before commencement of eviction proceedings in court. The statute and HUD's implementing regulations at 24 CFR part 966 state that for certain criminal-related evictions the housing authority may bypass the administrative hearing. However, HUD must first make a determination that local law requires a pre-eviction court hearing that provides the basic elements of due process (a ''due process determination''). This notice lists the judicial eviction procedures for which HUD has issued a due process determination.

FOR FURTHER INFORMATION CONTACT: Office of General Counsel, Assisted Housing Division, Room 8166, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410; telephone (202) 708–2140. Hearing or speech-impaired individuals may call 1–800–877–8339 (Federal Information Relay Service TTY). (Except for the ''800'' number, these are not toll free numbers.) Individuals may arrange to inspect and copy the documents detailing the legal analysis on which the due process determinations are based by contacting the Assisted Housing Division.

SUPPLEMENTARY INFORMATION:

I. Background

HUD has published a final rule elsewhere in today's Federal Register amending its regulations at 24 CFR part 10, which sets forth HUD's rulemaking policies and procedures, and 24 CFR part 966, which governs HUD's public housing lease and grievance procedures. The rule adds a new paragraph (a)(2)(iii) to § 966.51 which states that ''[f]or guidance of the public, HUD will publish in the Federal Register a notice listing the judicial eviction procedures for which HUD has issued a due process determination.''

This notice implements 24 CFR 966.51(a)(2)(iii). The notice provides a State-by-State listing of the due process determinations issued by HUD. Each listing provides a brief description of the judicial eviction procedures required by local law (e.g., forcible entry and detainer actions) which HUD has determined are consistent with the basic elements of due process as further defined in 24 CFR 966.53(c).

II. Listing of Judicial Eviction Procedures for Which HUD Has Issued a Due Process Determination

Alabama

Unlawful detainer action in district court under Ala. Code §§ 6–6–310(2) to –353 (1975) and a possessory action in district court under the Sanderson Act, Ala. Code §§ 35–9–80 to –88.

Alaska

Forcible entry and detainer action in district or superior court under Alaska Stat. §§ 09.45.060 to .160.

Arizona

Forcible entry and detainer action in justice or superior court under Ariz. Rev. Stat. Ann. Sections 12–1171 –1183.

Arkansas

Forcible entry and detainer action in circuit court under Ark. Code Ann. tit. 18, ch. 60, subch. 3.

California

Unlawful detainer action (as defined in Cal. Civ. Proc. Code Section 1161) in superior, municipal or justice court.

Colorado

Unlawful detainer action in district or county court under Colo. Rev. Stat. §§ 13–40–104 to –123 (1987, Supp. 1989).

Delaware

Summary proceeding for possession in justice of peace court under Del. Code Ann. ch. 57.

District of Columbia

(1) A civil ejectment action under D.C. Code Ann. § 16–1101 in the civil division of the superior court; (2) A summary civil action for unlawful detainer under D.C. Code Ann. § 16–501 in the landlord and tenant branch of the superior court; and (3) An action to recover possession of a rental unit used as a drug haven under D.C. Code Ann. § 45–2559.2 in the landlord and tenant branch of the superior court.

Florida

An action for possession in county court under Fl. Stat. Ann. § 83.59 and a summary procedure for possession in county court under Fl. Stat. Ann. § 51.011.

Georgia

Dispossessory action in courts of record pursuant to Ga. Code Ann. § 44–7–50 *et seq.* and dispossessory action in magistrate court pursuant to Ga. Code Ann. Section 15–10–1 *et seq.*

Idaho

Unlawful detainer action in district court under Idaho Code Ann. tit. 6, ch. 3.

Illinois

Forcible entry and detainer (''FED'') action in circuit court under Ill. Ann. Stat. ch. 110, para. 9–101 *et seq.* (Smith-Hurd 1992), including two special procedures for drug eviction: (1) a public housing agency FED action to evict the tenant for drug trafficking under Ill. Ann. Stat. ch. 110., para. 9–118; and (2) an FED action to evict the tenant under the Illinois Controlled Substance and Abuse Act, Ill. Ann. Stat. ch. 100–1/2, para. 13.9 *et seq.* (Smith-Hurd 1992).

Indiana

Ejectment action (as defined in Ind. Code Ann. § 32–6–1.5–1 (Burns 1992)) in the following courts: (1) The small claims and misdemeanor division of the circuit, superior and county courts; (2) the regular civil division of the circuit, superior, and county courts; and (3) the Municipal Court of Marion County.

Iowa

Forcible detainer action in district court under Iowa Code Ann. chs. 562A, 631, 648 and the Iowa Rules of Civil Procedure.

Kansas

An action in district court for rent and possession under Kan. Stat. Ann. Section 58–2501 to –2533, 58–2540 to –2573; and an action in district court for forcible detainer under Kan. Stat. Ann. §§ 58–2542 to –2573 and Kan. Stat. Ann. ch. 61, art. 23.

Kentucky

Forcible entry and detainer (FED) action in district court in jurisdictions that have adopted the Uniform Residential Landlord and Tenant Act (URLTA). The URLTA provisions on FED actions are set forth in Ky. Rev. Stat. §§ 383.500 to .715.

Maine

Forcible entry and detainer action in district court under Me. Rev. Stat. Ann. ch. 14, Section 6001.

Maryland

(1) An action for summary eviction in district court under Md. Code Ann., Real Prop. Sections 8–401 to –403; (2) An action for ejectment in circuit court under Md. Code Ann., Cts. & Jud. Proc. § 4–402; and (3) An action for ejectment in circuit court under Md. Rules Ann. ch. 1100, §§ T40 to T46.

Massachusetts

An action for eviction in housing, district or superior court under Mass. Gen. Laws ch. 239.

Michigan

A summary proceeding for recovery and possession of premises in district court under Mich. Comp. Laws §§ 600.5701 to .5756.

Minnesota

Forcible entry and unlawful detainer action in district court (or in the housing courts of Hennepin and Ramsey Counties) under Minn. Stat. Ann. §§ 566.01 to .33.

Missouri

Unlawful detainer action (as defined in Mo. Rev. Stat. § 534.030) in circuit court (including an action in small claims courts).

Montana

An action for possession in district or justice court under the Montana Residential Landlord and Tenant Act of 1977, Mont. Code. Ann. Sections 70–24–101 to –442

Nebraska

An action for the restitution of real property in county or district court under the Nebraska Uniform Residential Landlord and Tenant Act, Neb. Rev. Stat. Section 76–1401 *et seq.*

New Hampshire

A summary action for eviction under N.H. Rev. Stat. Ann. ch. 540 and a civil action of ejectment and entry.

New Jersey

An action for eviction in the Special Civil Part of the Superior Court, Law Division, under N.J. Stat. Ann. Section 2A:18–61.1 *et seq.*

New Mexico

A summary action for possession in district or magistrate court under the Uniform Owner-Resident Relations Act, N.M. Stat. Ann. Sections 47–8–1 to –51 (Michie 1978).

New York

Summary eviction proceedings under N.Y. Real Prop. Acts. Law art. 7

North Dakota

An action for eviction in district or county court under N.D. Cent. Code Sections 33–06–01 to –04.

Ohio

Forcible entry and detainer action in municipal or county court under Ohio Rev. Code Sections 1923.01 to .15

Oklahoma

An action in district court for forcible entry and detainer (12 Okl. St. Section 1148.1 to .16, 1751 to 1772) for noncompliance which materially affects health or safety.

Oregon

Forcible entry and detainer action in district court under Or. Rev. Stat. Sections 90.100 to .940, 105.110 to .155.

Pennsylvania

An action for eviction in the court of common pleas under Section 511 of the Pennsylvania Landlord Tenant Act, 68 Pa. Cons. Stat. Section 250.511 and an action before a district justice for recovery of possession of real property under rules in the 500 series of the Pennsylvania Rules of Civil Procedure for District Judges.

Rhode Island

An action for eviction in district court under R.I. Gen Laws tit. 34, ch. 18.

South Carolina

An action for possession in circuit or magistrate court under S.C. Code Ann. tit. 27.

South Dakota

An action for detainer in circuit or magistrate court under S.D. Codified Laws Ann. Sections 21–16–1 to –12.

Tennessee

An unlawful detainer action under Tenn. Code Ann. Sections 29–18–101 to –134 and an action for possession under Tenn. Code Ann. Sections 64–2801 to –2864, 66–28–101 to –517.

Texas

An action for forcible entry and detainer in justice court under Tex. Prop. Code Ann. Sections 24.001 *et seq.*, 91.001 *et seq.* and a trespass to try title action in district court under Tex. Prop. Code Ann. Sections 22.001 *et seq.* and 91.001 *et seq.*

Utah

Unlawful detainer action in district or circuit court under Utah Code Ann. Sections 78–36–1 to –12.6 (1989 and 1990 Supp.).

Vermont

A superior court ejectment action pursuant to Vt. Stat. Ann. tit. 9, Sections 4451–4468 and Vt. Stat. Ann. tit. 12, Section 4851 *et seq.*

Virginia

An unlawful detainer action in circuit court or general district court pursuant to Va. Code Sections 8.01–126.

Washington

An unlawful detainer action in superior or district court under Wash. Rev. Code chs. 59.12, 59.18.

West Virginia

An action in magistrate or circuit court for unlawful detainer under W. Va. Code ch. 55, art. 3 or for wrongful occupation under W. Va Code ch. 55, art. 3A–1.

Wisconsin

An action for eviction in circuit court under Wis. Stat. Ann. ch. 799.

Wyoming

An action for ejectment in district court under Wyo. Stat. Section 1–32–202 *et seq.*

Dated: March 12, 1996.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 96–7060 Filed 3–25–96; 8:45 am]

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federal register

Tuesday
March 26, 1996

Part VI

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 20

Board of Contract Appeals Rule Revisions; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 20

[Docket No. FR–4013–F–01]

RIN 2501–AC16

Board of Contract Appeals Rule Revisions

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises HUD's Board of Contract Appeals regulations in 24 CFR part 20 to increase certain monetary amounts that are required by the Federal Acquisition Streamlining Act of 1994.

EFFECTIVE DATE: April 25, 1996.

FOR FURTHER INFORMATION CONTACT: David T. Anderson, Chairman, HUD Board of Contract Appeals, Room 2131, U.S. Department of Housing and Urban Development, Washington, DC 20410–0001; telephone (202) 927–5110. (This number is not a toll-free number.) For hearing- or speech-impaired persons, this number may be accessed via TTY by contacting the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Amendments Made by This Rule

This final rule revises the rules of the Department of Housing and Urban Development Board of Contract Appeals. The revisions to Rule 1, 2, 12.1 and Rule 12.3, increasing certain monetary amounts, are required by the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355, approved October 13, 1994), which amended the Contract Disputes Act of 1978, 41 U.S.C. 601–613. Rule 6 has been revised in the interests of judicial efficiency and fairness, holding the Government to the same obligation with respect to filings as the Appellant. Finally, Section 20.3 of the Board Rules has been revised to note changes in the Board's physical location and facsimile number, and to note the availability of alternative dispute resolution procedures and the applicability of the Equal Access to Justice Act.

Justification for Final Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. However, part 10 provides for exceptions from that general rule where the Department finds good cause to omit advance notice and public comment is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1). The Department finds that good cause exists to publish this rule for effect without first soliciting public comment because the statutory provisions are self-executing and prior public comment is unnecessary. The rule only updates the current regulations to comply with the Federal Acquisition Streamlining Act of 1994.

Other Matters

Environmental Impact

An environmental finding under section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321–4347) and 24 CFR Part 50 is categorically excluded under § 50.20(k) because this rule only revises internal administrative procedures of the Department.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule only revises the Department's Board of Contract Appeals rules.

Family Impact

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this final rule will not have a potential, direct, significant impact on family formation, maintenance, and general well-being; therefore, it is not subject to review under this order.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this final rule will not have significant federalism implications and thus are not subject to review under the order. This final rule will not interfere with or preempt State or local government functions.

List of Subjects in 24 CFR Part 20

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

Accordingly, 24 CFR part 20 is amended as follows:

PART 20—BOARD OF CONTRACT APPEALS

1. The authority citation for part 20 has been revised to read as follows:

Authority: 41 U.S.C. 601–613; 42 U.S.C. 3535(d).

2. In § 20.3, paragraph (a) is revised to read as follows:

§ 20.3 Organization and location of the Board.

(a) *Location.* The Board's mailing address is: Board of Contract Appeals, U.S. Department of Housing and Urban Development, Room 2131, 451 Seventh Street, S.W., Washington, D.C. 20410–0001. For items requiring non-postal delivery, the Board is located in Room 3229, 1201 Constitution Ave., N.W. 20001. The telephone number of the Board is (202) 927–5110. (This is not a toll-free number.) For learning- or speech-impaired persons, this number may be accessed via TTY by contacting the Federal Information Relay Service at 1–800–877–8339. The facsimile number is (202) 927–6257.

* * * * *

3. Section 20.10 is amended by:

a. Designating the undesignated paragraph as paragraph (a); and

b. Adding new paragraphs (b), (c) and (d), as follows:

§ 20.10 Rules.

(a) * * *

(b) *Filing Requirements.* A party shall file with the Board one original of any pleading or motion. That party shall simultaneously serve upon the other party of record one copy of that pleading or motion filed with the Board. Filings may be transmitted to the Board via facsimile. However, the original of any document transmitted to the Board by facsimile shall simultaneously be mailed to the Board.

(c) *Alternative Disputes Resolution.* The Administrative Dispute Resolution Act authorizes and encourages Federal agencies to use mediation, conciliation, arbitration, and other techniques for the prompt and informal resolution of disputes. With the mutual consent of the parties, the Board may assist in the resolution of disputes by Alternative Dispute Resolution (ADR) procedures. The utilization of ADR procedures shall not relieve the parties from the filing requirements or other orders of the Board relating to a contract appeal duly docketed before the Board.

(d) *Equal Access to Justice Act.* The Equal Access to Justice Act provides that agencies which conduct adversary adjudications ''shall award, to a prevailing party other than the United States, fees and other expenses incurred

by that party in connection with that proceeding, unless the adjudicative officer of the agency finds that the position of the agency was substantially justified or that special circumstances make an award unjust.'' 5 U.S.C. § 504. Prevailing parties in proceedings before the Board may apply for an award under the Act following the issuance by the Board of its final decision in the appeal.

* * * * *

Rule 1 [Amended]

4. In paragraphs (b) and (c) of Rule 1. ''Appeals, how taken.'' of § 20.10, ''$50,000'' is revised to read ''$100,000'' wherever it appears.

Rule 2 [Amended]

5. In the last sentence of Rule 2 ''Notice of appeal, contents of.'' of § 20.10, ''$50,000'' is revised to read ''$100,000.''

Rule 6 [Amended]

6. In paragraph (b) of Rule 6. ''Pleadings.'' of § 20.10, the last sentence of paragraph (b) is removed.

Rule 12.1 [Amended]

7. In paragraph (a) of Rule 12.1. ''Elections to utilize small claims (expedited) and accelerated procedures.'' of § 20.10, ''$10,000'' is revised to read ''$50,000'' wherever it appears and in paragraph (b) ''$50,000'' is revised to read ''$100,000'' wherever it appears.

Rule 12.3 [Amended]

8. In paragraph (c) of Rule 12.3. ''The accelerated procedure.'' of § 20.10, ''$10,000'' is revised to read ''$50,000'' wherever it appears.

Dated: March 7, 1996.

Henry G. Cisneros,

Secretary.

[FR Doc. 96–7089 Filed 3–25–96; 8:45 am]

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Tuesday
March 26, 1996

Part VII

Department of Transportation

Coast Guard

46 CFR Parts 10, 12, and 15

International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW): Implementation of 1995 Amendments; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10, 12, and 15

[CGD 95–062]

RIN 2115–AF26

Implementation of the 1995 Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW)

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes changes to the current domestic rules on licensing, documentation, and manning in compliance with recent amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW). The amendments were adopted by a Conference of Parties to STCW in July 1995, and will come into force on February 1, 1997, though some changes to domestic rules must come into force before then to ensure these rules conform with international requirements, and other changes may come into force after then to allow a more gradual shift in practice. The proposed changes would affect the full range of activities associated with determining that an individual is competent for service in certain shipboard capacities.

DATES: Comments must be received on or before July 24, 1996.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA, room 3406) [CGD 95–062], U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. Comments on collection-of-information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attn: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

A copy of the material listed in Incorporation by Reference of this preamble is available for inspection at room 3406, U.S. Coast Guard Headquarters.

A copy of the 1995 Amendments to STCW may be obtained by writing Commandant (G–MOS), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, or by calling (202) 267–0229, between 8 a.m. and 3 p.m. Monday through Friday, except Federal holidays. Requests may also be submitted by facsimile at (202) 267–4570.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Young, Project Manager, Operating and Environmental Standards Division (G–MOS), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, telephone (202) 267–0216.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD 95–062] and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

Hearings

The Coast Guard has determined that the opportunity for oral presentations will aid in this rulemaking, and will hold at least one public hearing during the comment period. The Coast Guard solicits recommendations on dates and locations for a public meeting. Requests for a public meeting should be addressed to the Marine Safety Council at the address under **ADDRESSES**. The Coast Guard will provide more information about public hearings by a later document in the Federal Register.

Background and Purpose

On July 7, 1995, a Conference of Parties to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW), meeting at the Headquarters of the International Maritime Organization (IMO) in London, adopted a package of Amendments to STCW. The amendments will enter into force on February 1, 1997, unless a third of the parties to the Convention, or parties representing over 50 percent of the world's hipping tons, object to them by August 1, 1996. Because they were adopted unanimously by the Conference, no objections are expected. Consequently, the Coast Guard is taking the steps necessary to implement the revised requirements to ensure that U.S. documents and licenses are issued in compliance with the 1995 Amendments to STCW.

The Convention sets qualifications for masters, officers, and watchkeeping personnel on seagoing merchant ships. It was adopted in 1978 by a conference at IMO Headquarters in London and it entered into force in 1984. Currently, there are 114 State-Parties, representing almost 95 percent of the world's merchant-ship tons. The United States became a party in 1991. Over 90 percent of ships visiting U.S. waters are foreign-flag. Approximately 350 large U.S. merchant ships that routinely visit foreign ports, as well as thousands of smaller U.S. documented commercial vessels that operate on ocean or near-coastal voyages, are subject to STCW.

In 1993, IMO embarked on a comprehensive revision of STCW to establish the highest practicable standards of competence and to address human error as a major cause of maritime casualties. By 1993, significant limitations to the existing Convention had become apparent. They included requirements that were too vague and left too much to the discretion of Parties; the absence of clear, uniform standards of competence; ineffective international superintendent to verify that Parties were in fact complying with Convention requirements; limited provisions for port-State control; and outdated technical references that failed to address modern shipboard systems, job descriptions, and approaches to maritime training such as the use of simulation technology.

The amendments adopted by the Conference in July 1995 were comprehensive and detailed. They concern port-State control, communication of information to IMO to allow for mutual oversight, and responsibility of all State-Parties to ensure that seafarers meet objective standards of competence. They also require candidates for certificates (licenses and document endorsements) to establish competence through both subject-area examinations and practical demonstrations of skills. Training, assessment, and certification of competence are all to be managed

within a quality-standards system to ensure that stated objectives are being achieved.

The Coast Guard published a notice of inquiry in the Federal Register [60 FR 56970 (November 13, 1995)] to solicit information on the costs that may be associated with implementation of the 1995 Amendments to STCW. This notice is discussed in more detail under the heading ''Regulatory Evaluation.''

The Coast Guard held a public meeting on August 31, 1995, to discuss the outcome of the Conference and seek public comment on how the 1995 Amendments to STCW should be implemented by the United States. Comments received at the meeting and in response to the notice of inquiry have been taken into consideration in the development of implementing regulations. Three written comments were submitted to the docket, and they will be discussed in the appropriate sections of this preamble.

Additionally, the Coast Guard had sought comment from the public during the period leading up to the Conference that adopted the 1995 Amendments to STCW. The Coast Guard had held seven public meetings to determine what positions U.S. delegations should advocate at meetings held by IMO, and to exchange views about Amendments to STCW that were under discussion.

The Coast Guard has also taken advantage of the meetings of its advisory panels, particularly the Merchant Marine Personnel Advisory Committee (MERPAC), the Towing Safety Advisory Committee (TSAC), and the Navigational Safety Advisory Council (NAVSAC), to discuss developments relating to the amendment of STCW and the domestic implementation of these amendments.

Related Rulemakings

This proposed rulemaking has been prepared in anticipation that several other rulemakings will revise Parts 10, 12, and 15 or address related subjects.

First, in docket number CGD 95–072 [60 FR 50455 (September 29, 1995)], the Coast Guard has made technical and editorial corrections to its current rules, removing outdated references and reflecting current organizational structures.

Second, in CGD 91–045, the Coast Guard published a supplemental notice of proposed rulemaking (SNPRM) [60 FR 55904 (November 3, 1995)] that proposed operational measures to reduce spills from existing tank vessels without double hulls. This too involves subjects addressed here to implement the STCW Amendments, such as rest-period requirements and training in bridge-team procedures and bridge-resource management.

Third, in CGD 94–029, a proposed rule for modernizing examination methods was published [60 FR 10053 (February 23, 1995)]. Essentially, it would allow for the use of testing services from the private and public sectors to confirm the competency of candidates for Coast Guard licenses.

Fourth, in CGD 94–055, there is under development a proposal that concerns licensing requirements for officers of towing vessels. It stems from investigations into the Sunset Limited tragedy, when a tug and barge damaged a railroad bridge in September 1993. It may introduce into 46 CFR Part 10 new terms and concepts, such as the *designated examiner, practical demonstration, and standard of competence*, and the use of training-record books. The Coast Guard has been working with TSAC on CGD 94–055.

The Coast Guard will make every effort to coordinate these projects with a view to establishing uniform requirements except where there is a compelling need to maintain a difference in respect of a particular activity or class of vessel.

In keeping with other recent Coast Guard initiatives, this proposed rule tries to avoid unnecessary additional requirements when international standards are being implemented. Specifically, the Coast Guard has compared the rules to the international standard and has determined that it would not unnecessarily establish a requirement in excess of that standard. With this objective, the rule makes direct reference to international standards where possible. Where there is a difference in substance between the rule and the international requirement, this is noted and discussed in the section-by-section analysis. In most cases, the difference involves an exercise of discretion to address a specific class of vessel rather than an additional requirement. In some cases, clear differences with the international scheme are retained to preserve continuity in the U.S. licensing system. The Coast Guard requests comments on these differences, and the advantages that might be derived from removing them from current domestic rules.

The Coast Guard has attempted to develop a rule that would be self-implementing. In other words, it has tried to minimize the direct role the Coast Guard would need to play in overseeing routine compliance with the requirements. Ideally, it would like to minimize its direct involvement and limit its role to the following: (a) performing functions governmental in nature such as issuing certificates of competency; (b) setting standards for such certificates; (c) addressing special circumstances or exceptions to the general case clearly covered by the regulations; (d) monitoring training and assessment by spot-checks or by review of random samples to ensure that the new ''quality-standards system'' requirements are being maintained; and (e) keeping some necessary records.

Discussion of Proposed Rule

General

The following discussion proceeds in the order in which the proposed revisions to current domestic rules are presented. However, a few general comments may assist the reader and reduce repetition of a point common to many parts of the revisions.

1. *Approach.* The approach taken in this proposed rule is to retain the existing structure of the current domestic rules on licensing (46 CFR Part 10), certification of seamen (46 CFR Part 12), and manning (46 CFR Part 15), and incorporate specific requirements of the 1995 Amendments to STCW. Where possible, this Convention and its associated Seafarers' Training, Certification and Watchkeeping Code (STCW Code) have been incorporated by reference to avoid unnecessary duplication and to ensure compatibility between international and domestic requirements.

The 1995 Amendment to STCW essentially replace the current Annex to the 1978 Convention with a new Annex and an associated STCW Code. The STCW Code is divided into two separate parts (A and B), that are both is organized to parallel, exactly, the STCW Regulations in the Annex. Part A provides mandatory standards that are directly referred to in the relevant STCW Regulations in the Annex. Part B is non-mandatory guidance to assist in implementation of the requirements of Part A, and to promote uniform interpretation of the STCW Regulations. Not all of the STCW Regulations have explanatory material in both parts of the STCW Code.

Chapter I of the new Annex is expanded to include new STCW Regulations on matters such as the use of simulators in training and assessment, the qualifications of persons responsible for the training and assessment of seafarers, the establishment of a quality-standards system to ensure achievement of defined objectives, the establishment of medical-fitness standards for seafarers, and the responsibilities of companies.

The remaining part of the new Annex is enlarged from six to eight chapters. Chapters II, III, and IV have retained their application to the master and deck department, the engine department, and radiocommunications, respectively. However, material that was previously presented as appendices to the original STCW regulations is now contained in the STCW Code, and detailed standards of competence are set out in the corresponding sections of the Code. Additionally, the standards of competence are organized along functional lines, with three levels of responsibility. The amendments establish requirements for certification for the following seven functions: navigation; handling and stowage of cargo; controlling the operation of the ship and care for persons on board; marine engineering; electronic and control engineering; maintenance and repair; and radiocommunications. Three levels of responsibility are associated with each function under STCW—management level, operational level, and support level.

Chapter V, which was previously amended in 1994 and which addressed only tanker personnel, is not expanded to address personnel on roll-on/roll-off(ro-ro) passenger ships.

Chapter VI, which currently addresses only proficiency in survival craft and rescue boats, is expanded to require familiarization training or instruction for all seafarers, and basic safety-training for those who have safety or pollution-prevention duties.

Chapter VII allows for alternative-certification systems under which certificates could be issued on the basis of functions combined in ways that differ from those associated with traditional shipboard capacities under Chapters II, III, and IV. This flexibility is subject to a number of restrictions under the STCW Regulations in Chapter VII. The Coast Guard is not planning, at this time, to incorporate provisions for alternative certification without further evaluation and industry support. The Coast Guard requests comments on the application of Chapter VII to U.S. licensing and documentation.

In the 1995 Amendments to STCW, all watchkeeping provisions are consolidated under new Chapter VIII and the associated sections of the STCW Code. New STCW Regulation VIII/1 requires Administrations to establish and enforce rest-hour requirements for watchkeeping personnel to prevent fatigue.

2. *Scope of application.* STCW applies to seagong ships (except pleasure craft, fishing vessels, and ships entitled to sovereign immunity such as warships). Article II defines a *seagoing ship* as a ship other than one that ''navigate[s] exclusively in inland waters or in waters within, or closely adjacent to, sheltered waters or areas where port regulations apply.'' This proposed rule, which implements STCW, applies to any commercial vessel that operates seaward of the boundary lines established by 46 CFR part 7.

The Coast Guard does not intend to apply the requirements of STCW to vessels that operate exclusively on the inland waters of the United States. However, some of the proposals would have the effect of modifying how the Coast Guard does business and the conditions under which it would consider approving a program of training and assessment for qualifying an individual for a license, document, or endorsement. It does not intend to restrict, to ocean and near-coastal licenses and documents, procedures that may also be suitable to training for inland licenses. The Coast Guard solicits comments on the potential effects on candidates for inland licenses and documents, and on the enterprises that offer training to such candidates.

The Coast Guard does not consider STCW to apply directly to personal serving on ships that operate exclusively on the Great Lakes. However, individuals using time served on such vessels toward an ocean or near-coastal license, and those who are being trained at training institutions that serve mariners in the Great Lakes region, need to be aware of the requirements that mariners must meet to hold STCW Certificates if those mariners will be serving on ships in ocean service.

One comment submitted in response to the request for comments published in the Federal Register on August 2, 1995 [60 FR 39306], requested that the Coast Guard consider deferring implementation of the 1995 Amendments to STCW in respect of Mobile Offshore Drilling Units (MODUs). The comment pointed out a resolution adopted by the 1995 Conference of Parties to STCW, noting that time constraints had not allowed full consideration to the possibility of including provisions on the training and certification of maritime personnel employed on board MODUs. The resolution invites IMO to consider developing provisions addressing this matter under STCW, or in such other instrument as may be appropriate.

The resolution referred to in the comment recommends special training and certification for industrial personnel serving on MODUs because of the specialized nature of MODUs' operations. To the extent a MODU is a *seagoing ship* under STCW, this proposed rule would apply to seafarers serving on one. On the other hand, in approving specific training programs, the Coast Guard would take into consideration, and would use as the basis for its evaluation of training programs, any IMO resolutions that provide special guidance relating to the training of personnel on MODUs.

In this regard, the following three IMO resolutions are particularly relevant: A.538(13), ''Maritime Safety Training of Personnel on Mobile Offshore Units''; A.712(17), ''Recommended Standards of Specialized Training, Qualifications and Certification of Key Personnel Assigned Responsibility for Essential Marine Functions of Mobile Offshore Units''; and A.828(19), ''Recommendation on Maritime Safety and Emergency Preparedness Training for all Personnel on Moble Offshore Units''.

The comment also suggested that the Coast Guard accept or recognize certificates issued by another Party to STCW for service on MODUs. The Coast Guard does not consider this request to be viable at this time. The issue of recognition is complicated by citizenship requirements that apply to the following: (a) candidates for U.S. licenses and certificates of registry under 46 U.S.C. 7102, (b) crewmembers on documented vessels of the United States under 46 U.S.C. 8103, and (c) MODUs operating on the U.S. outer continental shelf under 43 U.S.C. 1356. Another issue would be the principle of reciprocity or mutual recognition between U.S. and non-U.S. certificates.

3. *License structure.* The Coast Guard would not, by this proposed rule, replace the existing license structure with the license structure presented in STCW. The 4-level license structure in Part 10 would persist (e.g., chief engineer, 1st, 2nd, and 3rd assistant engineer officer, and 3 levels of mate under the master). Although the STCW structure is less complicated than the U.S. structure, the Coast Guard does not consider it appropriate or expedient to propose a comprehensive change in this rulemaking.

Some of the STCW terms must be introduced into U.S. regulations to ensure that holders of U.S. licenses would be entitled to hold the appropriate STCW certificate. The Coast Guard is concerned, however, that the elimination of the existing categories of license might create difficulties for certain segments of the industry, or could have unintended impacts on established career patterns in the maritime industry. In addition, it may

necessitate changes in the terms used in the manning-complement section of the U.S. Certificate of Inspection.

Trying to anticipate and address all of these possibilities could unnecessarily complicate promulgation of a rule intended only to implement new STCW requirements. The requirement for promulgating a rule by February 1, 1997, has precluded the opportunity for assessing the implications at this time. However, the Coast Guard is interested in comments on adjustments to the current U.S. licensing structure, to bring it into closer alignment with the STCW structure.

4. *Documentation.* Although the 1995 Amendments to STCW will permit the use of an STCW document to serve as both an individual's certificate of competency and an endorsement that the candidate meets STCW requirements, the Coast Guard plans to retain a distinction between the U.S. license and the STCW endorsement for the time being. In other words, each licensed officer who will be serving on a seagoing vessel will be issued both a U.S. license and a separate STCW endorsement. Of course, an STCW endorsement will have no validity unless accompanied by its holder's license.

5. *Communication to IMO.* In proposing this rule, the Coast Guard has been cognizant of its future obligation to submit to IMO a detailed description of how the United States complies with the 1995 Amendments to STCW. Under new STCW Regulation I/7, each Party must prepare a report on the steps it has taken to give the Convention ''full and complete effect.''

When complete information has been provided to IMO, and the Secretary-General of IMO has confirmed that in fact full effect has been given to STCW, the Maritime Safety Committee will be invited to formally confirm and identify the Party as having done so, and other Parties will be entitled to accept certificates issued by that Party as being in compliance with Convention requirements.

It will be important for the United States to be able to satisfy the requirements that earn this international recognition. This rulemaking is an essential step toward meeting that objective.

6. *Tonnage.* Both the U.S. licensing structure and the STCW structure employ tonnage thresholds in establishing requirements for training and certification. However, the U.S. structure includes several tonnage divisions not used in STCW, particularly in respect of lower-tonnage licenses. Also, these tonnage divisions are keyed to the tonnage of ships as determined under the regulatory tonnage-measurement system, which exempts certain spaces in calculating gross register tons (GRT) and therefore can result in lower tonnage values than calculations based on the International Convention on Tonnage Measurement of Ships, 1969 (ITC).

The 1995 Amendments to STCW include adjustments in the tonnage thresholds from 200 GRT to 500 gross tons (GT); and from 1,600 GRT to 3,000 GT that reflect a relatively close alignment between the various domestic tonnage systems used around the world and the ITC tonnage-measurement system. The new STCW Regulation I/15, on Transitional Provisions, allows Parties to reissue or revalidate certificates (licenses) based on the lower tonnage values by substituting 500 GT for 200 GRT, and 3,000 GT for 1,600 GRT, at their discretion.

A number of alternatives are available for addressing tonnage in the implementation of the 1995 Amendments to STCW. A threshold of 3,000 GT can be added as a new category of licensing without deleting any existing category. Under this alternative, the requirements for the 3,000-GT license would be identical to the requirements for a 1,600-GRT license; and anyone holding a 1,600-GRT license for service on a ship on near-coastal or ocean service would be entitled to hold an STCW endorsement for service on seagoing ships of 3,000 GT. Similarly, an individual holding a 200-GRT license would be entitled to hold an STCW endorsement for service on seagoing ships of 500 GT.

Another alternative would be to add a threshold of 3,000 GT as a new category of license, and delete the threshold of 1,600 GRT. Under this alternative a transition mechanism would be implemented by regulation or by policy guidance to ensure that holders of 1,600-GRT licenses were issued 3,000-GT licenses at the time of renewal.

A different approach would be needed to align the 200-GRT and 500-GRT thresholds in 46 CFR part 10 with the 500 GT threshold in the STCW Amendments, because the 500-GRT license entails special requirements that apply to certain classes of ships (i.e., OSVs). At the present time, it appears that these thresholds must be retained, and policy guidance will be developed for issuing an STCW endorsement at the 500-GT level, with the appropriate service limitations.

Comments on these or other alternatives may be submitted to the docket and will be considered before a final rule is published. In deciding how to proceed, the Coast Guard would make every effort to avoid penalizing either the holders of existing licenses or the operators of vessels that have exercised their option to be measured under the regulatory-tonnage-measurement system.

7. *Medical fitness.* The 1995 Amendments to STCW include a requirement for Parties to establish standards of medical fitness for seafarers, particularly regarding eyesight and hearing (STCW Regulation I/9). Under STCW as amended, candidates for certification will have to provide *satisfactory proof* that they meet the standards of medical fitness; and they must each hold a document attesting their medical fitness, issued by ''a duly qualified medical practitioner recognized by the Party.''

Criteria and procedures for medical fitness are already established by 46 CFR parts 10, 12, and 13. They include the following sections: § 10.205(d), physical-examination requirements for original licenses; § 10.207(e), physical requirements for raise of grade of license; § 10.209(d), physical requirements for license renewals; § 10.709, physical-examination requirements for pilots; § 12.02–27, physical requirements for renewal of a merchant mariner's document; § 12.05–5, physical requirements for Able Seamen; § 12.15–5, physical requirements for qualified members of the engine department; and § 13.125, physical requirements for tankermen.

There are currently no internationally agreed-upon standards of medical fitness for seafarers, except in respect of eyesight (which appear in section B–I/9 of the STCW Code). The 1995 STCW Conference adopted a resolution that (a) noted that the International Labor Organization (ILO) and the World Health Organization (WHO) are undertaking research into existing medical-examination requirements for seafarers on a global basis and (b) invited IMO to develop international standards of medical fitness for seafarers, in cooperation with the ILO and WHO. This matter is now on the work program of the IMO Sub-Committee on Standards of Training and Watchkeeping (STW). It is unlikely that such standards will be established before this proposed rule would be published as a final rule.

Meanwhile, the Coast Guard has been working with MERPAC to determine whether there is a need for more explicit physical standards for entry-level personnel. The Coast Guard is also continuing to work with the Maritime Administration in promoting the

Seafarers Health Improvement Program, which includes guidance for physical examinations for both entry of seafarers into, and retention in, the U.S. merchant marine.

The Coast Guard is also in the process of reviewing and revising Navigation and Inspection Circular Number (NVIC) 6–89, ''Physical Evaluation Guidelines for Merchant Mariners' Documents and Licenses,'' which identifies disqualifying medical conditions. As noted in one comment submitted to the docket in response to the notice published on August 2, 1995, medical-fitness standards must take into account the job description for the positions to be filled by the individual concerned, and the implications for both employees and employers under the Americans with Disabilities Act (ADA).

Taking the preceeding discussion into account, the Coast Guard is not venturing into any specific new medical-fitness standards in this proposed rule. However, to ensure compliance with the requirements of new STCW Regulation I/9, this rule includes a provision stating that each applicant for an entry-level MMD must provide a document issued by a qualified medical practitioner attesting the prospective seaman's medical fitness for anticipated shipboard duties (§ 12.02–07).

The Coast Guard invites comments on the need for and feasibility of establishing more prescriptive medical standards for entry-level personnel and particularly for personnel with duties in safety or pollution-prevention. It also invites comment on whether a licensed nurse practitioner should be considered a ''qualified medical practitioner'' for assuring medical fitness under U.S. regulations.

8. *Quality-standards system (QSS).* The 1995 Amendments to STCW include a new requirement (STCW Regulation I/8) for Parties to ensure that all training and assessment are ''continuously monitored through a quality-standards system to ensure achievement of defined objectives, including those concerning the qualifications and experience of instructors and assessors.'' Furthermore, the new STCW Regulation provides that an evaluation be conducted periodically by qualified persons, not involved in the activities concerned. The associated sections of the STCW Code expand on this STCW Regulation by outlining the requirements for a QSS in Part A, and then by additional guidance in Part B. For example, A–I/8 states that independent evaluations of assessments are to be conducted ''at intervals of not more than 5 years.'' Furthermore, the results of these evaluations are to be reported to IMO, in accordance with STCW Regulation I/7.

To a large degree, the current process of the Coast Guard for course approval meets the requirements of new STCW Regulation I/8, but this process is limited to specific required training (such as firefighting or radar), or training intended to substitute for part of a sea-service requirement. As discussed in more detail relative to 46 CFR Part 10 under *Approved training,* the 1995 Amendments to STCW expand the instances where approved training must or may be used to meet competence requirements. A QSS will be required for all such training.

This proposed rule incorporates elements that conform to the STCW requirements for a QSS for training and assessment activities, but that would at the same time take into consideration the impact on Coast Guard resources that may be needed for effective supervision. The proposed rule is intentionally drafted to allow for a variety of QSSs that may be tailored to suit particular programs of training and assessment. They are also designed to ensure that no QSS imposes unreasonable costs on small enterprises or entities that offer training programs whether limited in scope or offered only to a restricted pool of seafarers and programs that, regardless, may be conducted either on board ship or at shoreside.

The Coast Guard invites comments on the extent to which the following systems or processes, or a combination of such systems or processes, should be accepted as meeting the QSS requirements of the 1995 Amendments to STCW:

(a) Periodic accreditation under a recognized process like the regional accreditation used by high-level academic institutions in the United States, such as the Middle States Association of Colleges and Schools, provided that the process can be appropriately modified to explicitly cover maritime training and take into account guidance regarding quality-standards provided in part B–I/8 of the STCW Code.

(b) Periodic Accreditation by an independent professional agency, or a voluntary association of trade and technical schools, that has membership standards and a procedure for accreditation that takes into account guidance regarding quality-standards provided in part B–I/8 of the STCW Code.

(c) Periodic certification, by a State board of education, or other suitable regulatory body at the State level, establishing that a particular training program or institution is authorized to issue certificates of completion of training requirements in a relevant maritime field, if the supervising process takes into account guidance regarding quality-standards provided in part B–I/8 of the STCW Code.

(d) Periodic certification by an organization accepted or authorized by the Coast Guard, such as a ship-classification society, that has developed a certification process for maritime-training programs based on guidance regarding quality-standards provided in part B–I/8 of the STCW Code, or has suitably adapted such a process from the standards, guidelines, and principles contained in the ISO 9000 series, or from the equivalent Quality management and Quality Assurance Standards developed by the American National Standards Institute (ANSI).

(e) Periodic evaluation by a panel or team of maritime-education specialists, made up of professional staff from the State or Federal maritime academies, or from other recognized maritime-training institutions. The evaluation would be based on an industry standard to be developed, and guidance regarding quality-standards provided in part B–I/8 of the STCW Code.

The Coast Guard is continuing to work with MERPAC to identify how best to introduce an effective QSS. It will consider the recommendations of MERPAC that came from its first meeting in 1996 in drafting the final rule.

For further discussion on qualifications of instructors and assessors, see the section on *Approved training other than approved courses.*

9. *Simulators.* The 1995 Amendments to STCW promote the use of simulators for training and assessment by (a) requiring the proper use of radar and ARPA simulators in training, and (b) allowing the use of simulation as a tool for assessing the competence of candidates for certification. The amendments also set out performance standards for simulators used for conducting required training or assessment. An opportunity for grandfathering simulators installed or brought into use before February 1, 2002, is provided under STCW Regulation I/12.

Current domestic rules require the use of simulators for those training to qualify as radar observers (46 CFR 10.305 and 10.480) and promote the use of simulator training promoted by allowing it to count, in conjunction with approved training, as an equivalency for

up to 25 percent of required sea service (46 CFR 10.304(d)).

A new study by the Marine Board of the National Research Council (NRC) examines the role of ship-bridge simulation in the professional development and licensing of mariners responsible for vessels' navigation and piloting. The study, entitled ''Simulated Voyages'' recommends steps to increase the use of simulators in maritime training and assessment. The Coast Guard considers this proposed rule for implementing STCW to be consistent with the study and its conclusions. This rule is intended to allow introduction of the most effective use of simulators into maritime training and assessment taking place in the United States.

In this regard, the Coast Guard has also been working with the maritime academies in developing guidelines on the use of simulators there. The Maritime Academies Simulator Committee (MASC) includes representatives from the six State maritime academies, the Maritime Administration (MARAD), and the Coast Guard. The outcome of the efforts of this committee will figure in drafting the final rule.

Because of the wide variety of interpretations given to the term ''simulation,'' the Coast Guard invites comments on the need for introducing definitions, or technical performance standards, into the rules, and on the extent to which, or the conditions under which, personal computer-based training should be classified as falling within the scope of simulator training.

10. *Effective dates.* As noted earlier, the 1995 Amendments to STCW come into force on February 1, 1997. However, STCW Regulation I/15, on transitional provisions, allows some requirements to come into force more gradually. The Coast Guard will be working at IMO to establish an international agreement on precisely which requirements must come into force as of February 1, 1997. Any agreement reached at IMO will be taken into figure in drafting the final rule.

STCW Regulation I/15 provides that a Party may continue, until February 1, 2002, to issue certificates (licenses) in accordance with the domestic rules it has in place before the 1995 Amendments come into force (February 1, 1997) only in respect to seafarers who begin their sea service or their approved maritime training before August 1, 1998. Candidates who begin their service or their training after then will be subject to the full application of the revised STCW requirements.

Where options presented by this proposed rule would be to the advantage of the maritime industry in the United States, there may be no need to defer or delay implementation. Comments on the most suitable effective dates for new requirements associated with such matters as the QSS and the process for identifying qualified instructors and assessors should be submitted to the docket.

46 CFR Part 10—Licensing of Maritime Personnel

1. Purpose of Regulations

The Coast Guard would revise § 10.101(a) to reflect that the purpose of part 10 is twofold. This proposed rule is intended to provide, first, a means of determining that an applicant is qualified to hold a U.S. license and, second, a means of determining that an applicant is competent to hold an STCW certificate or endorsement to serve in a particular shipboard position. The use of the term ''STCW certificate or endorsement'' would allow the Coast Guard to combine the U.S. license and the STCW endorsement into a single document at some time in the future, for administrative convenience.

2. Approved Training

The Coast Guard would revise § 10.101(c) to indicate that Subpart C of Part 10 would apply not only to approved training used for remission of seagoing service but also to all training and assessment that must be approved as meeting the requirements of STCW. For additional discussion of approved training see the discussion of § 10.309 under *Approved training other than approved courses.*

3. Incorporation by Reference

The Coast Guard would introduce the necessary language in § 10.102 to allow technical requirements of the 1995 Amendments to STCW and to the STCW Code to be incorporated by reference into specific rules in part 10.

4. Definitions

The Coast Guard would add a number of new definitions in § 10.103. These include *approved training* because virtually all training required under STCW is subject to approval to ensure that it meets the relevant provisions of STCW. However, such training is distinct from training provided in the context of a course approved by the Coast Guard for use as a substitute for sea service. Under this proposed rule, training could be ''approved'' for the purposes of STCW if it met certain minimal conditions, as set out in § 10.309. Refer to the discussion of that section (paragraph 12) for more details.

The proposal also includes a definition for *Coast-Guard-accepted*. This term is used in a number of regulations to indicate that, although the Coast Guard would not in some cases engage in a formal approval process, it would maintain certain standards of practice by accepting materials or processes as meeting the applicable requirements, or by authorizing a third party to do so on its behalf under a Memorandum of Agreement.

This proposed rule also defines *approved instructor* as a person trained or instructed in instructional techniques and qualified to provide required training to candidates for licenses, documents, and endorsements.

A definition of *STCW endorsement* also appears in § 10.103 because that term occurs with some frequency in the proposed rule, and the definition would give this endorsement a special legal significance as a document issued under Part 10 to those found in compliance with STCW Standards of Competence.

For the purposes of this proposed rule, the Coast Guard assumes that Part 10 will also include a number of new definitions along the lines of those being developed for docket number CGD 94–055, the project on licensing requirements for officers of towing vessels, including the following:

(a) *Designated examiner* means an individual trained or instructed in assessment techniques and otherwise qualified to evaluate whether a candidate for a license, document, or endorsement has achieved the level of competence necessary to hold the license, document, or endorsement. This individual may be personally designated by the Coast Guard, or be designated within the context of a Coast-Guard-approved program of training or assessment.

(b) *Standard of competence* means the level of proficiency necessary for the proper performance of duties on board vessels in accordance with national and international criteria.

(c) *Practical demonstration* means the performance of an activity under the direct observation of a designated examiner for the purpose of establishing that the performer is sufficiently proficient in a practical skill to meet a specified standard of competence or other objective criterion.

These are not final definitions, and comments made on their applicability to STCW requirements will be taken into account in the rule on towing vessels to ensure that that final rule winds up consistent with all the changes being made to Part 10 by this. Both rules will also maintain uniformity with the definitions of identical terms used in

part 12. This will be discussed further under § 12.01–6.

5. Paperwork Approval

If this proposed rule finally results in new reporting and recordkeeping requirements, § 10.107 will refer to the appropriate OMB control numbers.

6. Eligibility for Licenses

The Coast Guard would revise paragraph (a) of § 10.207 to reflect that, in some cases, candidates must provide proof of having successfully completed practical demonstrations of certain skills. Demonstration requirements are further specified in proposals relating to §§ 10.205, 10.910, and 10.950.

7. Issuance of Licenses

The Coast Guard would revise § 10.202 to ensure that anyone qualified for an STCW certificate or endorsement is issued the appropriate documents at the same time as a license.

8. Requirements for Original Licenses

Under § 10.205, the Coast Guard would incorporate a number of new requirements from the 1995 Amendments to STCW, as follows:

(a) *Firefighting.* Under paragraph (g) of § 10.205, every candidate for a license—as master or mate of a vessel on near-coastal or ocean service, as an operator of an uninspected passenger vessel operating beyond the boundary line, for service on a MODU, and as an engineer—will have to meet the standard of competence in basic and advanced firefighting set out in STCW Regulations VI/1 and VI/3 and in Part A of the associated sections of the STCW Code. This proposed rule assumes that operators of seagoing towing vessels will be classified as masters or mates under a separate rulemaking [CGD 94–055]. If they are not, then the final rule in this will restore the reference to operators of such vessels.

A second provision would allow the Coast Guard to approve a firefighting course or training program specially designed for a particular ship or type of service. This is consistent with the exemption in STCW Regulation II/3 of the 1995 Amendments, which concerns certification of masters and mates on ships of less than 500 GT and states that

> [t]he Administration, if it considers that a ship's size and the conditions of its voyage are such as to render the application of the full requirements of this regulation and section A–II/3 of the STCW Code unreasonable or impracticable, may to that extent exempt the master and the officer in charge of a navigational watch on such a shop or class of ships from some of the requirements, bearing in mind the safety of all ships that may be operating in the same waters.

The Coast Guard expects to apply this flexibility, for instance, in approval of a firefighting course or training program for licensed personnel serving on small passenger vessels engaged in near-coastal voyages. In these cases, the Coast Guard would take into consideration the firefighting equipment whose fitting is actually required on such vessels, as well as the complexity of firefighting that may take place on such vessels. The Coast Guard invites comments on the scope, content, and skills-assessment techniques that it should include in these limited or modified courses or training programs.

(b) *Automatic Radar-Plotting Aids (ARPA).* The Coast Guard would revise § 10.205 by adding a new STCW requirement for every candidate for a license—as master or mate of vessels on near-coastal or ocean service, or as operator of uninspected passenger vessels operating beyond the boundary line—to establish competence in the use of ARPA. Candidates would have to have ARPA-simulator training. However, this requirement would not apply to those who will be serving on vessels not fitted with ARPA; in such cases, the license and STCW endorsement would state the lack of the training. (For further discussion of radar-training requirements, see the discussion of § 10.480 at page 46.)

(c) *Certificate for Operator of Radio in Global Maritime Distress and Safety System (GMDSS).* The Coast Guard would revise § 10.205 by adding a new STCW requirement that every candidate for a license—as master or mate of a vessel on near-coastal or ocean service—hold a Certificate for Operator of Radio in Global Maritime Distress and Safety System issued by the Federal Communications Commission (FCC) under its regulations (47 CFR Part 13), or a certificate of completion of an FCC-approved or Coast Guard-approved Certificate for Operator of Radio in Global Maritime Distress and Safety System. However, this requirement would not apply to those who will be serving on vessels not required to participate in the GMDSS system under FCC regulations (47 CFR Part 80) and Chapter IV of the International Convention on Safety of Life At Sea (SOLAS). Seagoing cargo ships of 300 GTs and seagoing passenger ships must meet GMDSS requirements. On the other hand, some mates or masters may have to hold GMDSS certificates before this proposed rule would become final in any form, if they are designated to serve as primary or secondary GMDSS operators under FCC regulations.

One comment submitted in response to the request for comments published in the Federal Register on August 2, 1995 [60 FR 39306], urged the Coast Guard to provide for ''maintenance of GMDSS and radio equipment in the revisions of the licensing and documentation regulations to reflect the STCW Amendments.'' The comment also said ''a communications and electronics position should be established incorporating the skills of the traditional Radio Officer and those of an electronics specialist.'' The comment also asserted that the Coast Guard, rather than the FCC, should certify training facilities and testing facilities for the GMDSS. Lastly, the comment said the Coast Guard should consider establishing standards of competence for shipboard radio-electronics personnel responsible for distress and emergency communications.

For regulatory purposes, the Coast Guard considers this comment to raise four distinct issues. Only two of these fall directly in the scope of the present rulemaking, to implement the 1995 Amendments to STCW. Qualifications of those who will be maintaining GMDSS and radio equipment, and their training and testing, are subjects within the scope of this project. A proposal for establishing an electronics-technician endorsement appears under part 12 (in new § 12.25–45).

Proposals for the establishment of a new crew position on U.S. ships, to be dedicated to communications and electronics, or modification of radio officers' role to encompass all GMDSS-related responsibilities, lie outside the scope of this rulemaking. STCW does not impose manning requirements on seagoing ships. On the other hand, the new certification standards may have implications for crew complements; therefore, the Coast Guard has included a proposal for revising part 15 concerning the ability of the electronics technician to perform at-sea maintenance of GMDSS installations when the ship is required to have that onboard-maintenance capability as one of the options under the GMDSS provisions of SOLAS. That proposal pertains to § 15.401.

With respect to the role of the Coast Guard and the FCC in regulating maritime communications, the Coast Guard currently recognizes the FCC as the agency with primary responsibility for establishing U.S. requirements for holding radiocommunications licenses or radio operators' certificates. This responsibility is complemented by the

Coast Guard's authority for issuing radio officers' licenses. This proposed rule honors the complementary roles of both agencies, while taking into account the fact that adjustments may be made in the future on how these roles are allocated and carried out. Comment to the docket is welcome on whether the Coast Guard should be involved in approving the GMDSS training program, as it is proposing to be. The Coast Guard will also be looking at this issue in light of section 365 of the Telecommunications Act of 1996 (Public Law 104–104) which will allow a vessel to operate without a radio officer if it is determined that the vessel is properly fitted with equipment to implement GMDSS, and the equipment is in good working condition.

(d) *Personal survival techniques.* The Coast Guard is proposing to revise § 10.205 by adding a new STCW requirement—for every candidate for a license as master, mate, or engineer on a vessel on near-coastal or ocean service, or for a license as operator of uninspected passenger vessels operating beyond the boundary line, or for a license for service on a MODU—to present proof of having received approval training or instruction in personal survival techniques (i.e., survival at sea in the event of abandoning ship). The object of the training is to ensure that the candidate meets the standard of competence in personal survival techniques set out in STCW Regulation VI/1 and in table VI/1–1 in section A/VI/1 of the STCW Code. The Coast Guard intends to accept training and assessment which is based on documented practical experience.

The Coast Guard is also proposing to approving a personal survival course of training especially designed for a particular ship or type of service. This is consistent with the flexibility conferred by section A–VI/1, paragraph 3, of the STCW Code that concerns familiarization and basic safety-training and states that

> [t]he Administration may, in respect of ships other than passenger ships of more than 500 gross tonnage engaged on international voyages and tankers, if it considers that a ship's size and the conditions of its voyage are such as to render the application of the full requirements of this section of the STCW Code unreasonable or impracticable, exempt to that extent the seafarers on such a ship or class of ships from some of the requirements, bearing in mind the safety of people on board, the ship and property and the protection of the environment.

The Coast Guard expects to apply this flexibility, for instance, in approval of personal survival training for licensed personnel serving on small vessels engaged in near-coastal voyages. The Coast Guard invites comment on the scope, content, and skills-assessment techniques that should be included in this limited or modified training.

(e) *Personal safety and social responsibilities.* The Coast Guard is proposing to revise § 10.205 by adding a new STCW requirement—for every candidate for a license as master, mate, or engineer on a vessel in near-coastal or ocean service, or for a license as an operator of uninspected passenger vessels operating beyond the boundary line, or for a license for service on a MODU—to present a certificate of completion of approved training in personal safety and social responsibilities (e.g., taking proper actions in emergencies, taking precautions to prevent pollution, observing safe working practices, understanding and communicating orders, and contributing to effective human relationships on board ship by being aware of employment conditions, individual rights and obligations, dangers of alcohol abuse, etc.). The object is to ensure that the candidate meets the standard of competence in personal safety and social responsibility set out in STCW Regulation VI/1 and in table A–VI/1–4 in section A/VI/1 of the STCW Code.

The Coast Guard is also proposing to let itself approve a course in personal safety and social responsibilities especially designed for a particular ship or type of service. This is consistent with the exemption in section A–VI/1, paragraph 3, of the STCW Code quoted under paragraph (d) *Personal survival techniques.*

The Coast Guard invites comments on the scope, content, and skill-assessment techniques that belong in this limited or modified training.

The Coast Guard anticipates that the requirements for firefighting, personal survival, and personal safety and social responsibility including pollution prevention can be combined into a single course of training or instruction, which also includes elementary first aid, to meet the basic safety-training requirements of section A–VI/1, paragraph 2, of the STCW Code. This will be particularly true with respect to operators of uninspected passengers vessels (OUPVs) operating seaward of the boundary line. The Coast Guard intends to develop a checklist of elementary basic safety-instruction that candidates for OUPV licenses could have confirmed by boating-safety instructor from the Coast Guard Auxiliary or the Red Cross, or by a suitable official from the local firefighting department. The Coast Guard invites comments on what belongs in this elementary basic safety checklist.

After receiving the basic safety-training or instruction, the license-holder must every 5 years provide evidence of having maintained the required standard of competence, by providing evidence at the time of renewal that he or she has demonstrated competence and has been examined or continuously assessed as part of an approved training program, in accordance with the tables in section A–VI/1, paragraph 2, of the STCW Code. This matter gets closer scrutiny in the discussion under paragraph 9, *Requirements for renewal of licenses.*

(f) *Procedures for bridge team-work.* The Coast Guard would revise § 10.205 by adding a new STCW requirement for every candidate for a license as master, or mate, on a vessel on near-coastal or ocean service to know effective bridge-team-work procedures as an essential element of the competence to maintain a safe navigational watch. The Coast Guard understands bridge-team-work procedures to encompass the processes by which the watchkeeping personnel work together efficiently and effectively to maintain a continuously safe watch. The concepts applied in training and assessment to that end should reflect the principles of bridge-resource management that contribute to the most effective performance of watchkeeping duties. In this regard, refer to the principles of bridge-resource management outlined in section B–VIII of the STCW Code.

(g) *Practical demonstration.* The Coast Guard would add a new subsection to § 10.205 to require that, when a practical demonstration of a skill is called for under this section or under a provision of STCW referred to in this section the candidate must provide sufficient evidence that the skill has been demonstrated properly in the presence of a designated examiner. A written record, including skills demonstrated, identity of the designated examiner, and the results of the demonstration, must be maintained in the applicant's license file. The Coast Guard invites comments on the best format for maintaining this record. For related proposals, refer to the discussion on tables 10.910 and 10.950.

9. Requirements for Raise in Grade of License

The Coast Guard would revise § 10.207 to require proof that candidates for a raise in grade of license have been examined and otherwise assessed, to establish that they meet standards of competence. In many cases, STCW will

require assessment by examination and by demonstration of practical skills, which will be in addition to any basic qualifications such as age, seagoing experience, and training.

10. Requirements for Renewal of Licenses

The Coast Guard is proposing to add a new subsection under § 10.209 to indicate that after July 31, 1998, applicants for renewals will have to meet new requirements for holding the original licenses at the grades concerned.

Candidates for renewal of licenses as masters or mates for service on vessels in ocean or near-coastal service, or as operators of uninspected passenger vessels operating beyond the boundary line, will have to have the appropriate training or instruction in firefighting, personal survival techniques, and personal safety and social responsibility. If the instruction took place more than 5 years ago, the candidates will also have to provide proof that competence was assessed and validated within the last 5 years. Regardless of the schedule under which a candidate's license is renewed, he or she will need to receive basic safety training in accordance with dates of compliance established in paragraph (b) of § 15.403 for service on a seagoing vessel. The Coast Guard intends to accept training and assessment which is based on documented practical experience.

Candidates for renewal of licenses will also need to be trained in ARPA if they will be serving on vessels fitted with ARPA and they will need to hold a Certificate for Operator of Radio in Global Maritime Distress and Safety System if they will be serving on vessels that participate in GMDSS.

The proposed deadline of July 31, 1998, derives from the transitional provisions of the 1995 Amendments to STCW, which allow for a phase-in of new requirements up to August 1, 1998. STCW Regulation I/15 permits a Party to renew certificates (licenses) until February 1, 2002, in accordance with rules that will be in effect before February 1, 1997. However, to meet the target for full implementation in 2002, it is necessary to process renewals in accordance with new requirements beginning in 1998.

With these changes, the renewal process will conform to the requirements of new STCW Regulation I/11 (Revalidation of Certificates) of the 1995 Amendments.

11. Required use of Training—And Assessment—record Books

As noted, the 1995 Amendments to STCW require the use of a training- and assessment-record book under some circumstances. The Coast Guard is proposing to revise § 10.304 to require use of Coast-Guard-accepted training- and assessment-record books when candidates for deck licenses are using training to substitute of service, and when candidates for engineer licenses need onboard training to meet the requirements of STCW. A training- and assessment-record book must provide certain basic information including an indication, by means of the initials or signature of a clearly identified, designated examiner, that the candidate has established, through practical demonstrations, that he or she is competent in each of the subjects of knowledge, understanding, and proficiency set forth in the tables of the appropriate section in Part A of the STCW Code.

The Coast Guard proposes to require the designated examiner to certify that he or she has in fact personally witnessed the practical demonstration by the candidate.

STCW requires the training- and assessment-record book to be ''approved.'' The Coast Guard plans to issue a NVIC or suitable regulation in due course that would set out the format or formats that it will consider approved (i.e., Coast-Guard-accepted) for the purposes of complying with this regulation. Formal approval would take place when the record book is submitted as proof that competence has been assessed.

12. Approved Training Other Than Approved Courses

The 1995 Amendments to STCW refer to ''approved training'' in the following eight contexts:

(a) STCW Regulation II/1 states that a candidate for certification as officer in charge of a navigational watch must have approved seagoing service of not less than 1 year ''as part of an approved training program which includes onboard training which meets the requirements of section A–II/1 of the STCW Code and is documented in an approved training-record book.'' In the absence of an approved training program, the candidate must have at least 3 years of approved seagoing service.

(b) STCW Regulation III/1 states that a candidate for officer in charge of an engineering watch, or for designated duty engineer, must have completed ''approved education and training of at least 30 months which includes onboard training documented in an approved training-record book and meets the standards of competence specified in section A–II/1 of the STCW Code.''

(c) STCW Regulation IV/2 states that candidates for certification as persons in charge of or performing radio duties on a ship required to participate in the GMDSS must have completed ''approved education and training and meet the standard of competence specified in section A–IV/2 of the STCW Code.''

(d) STCW Regulation V/1 requires certain personnel on tankers to have completed ''an approved tanker familiarization course'' and ''an approved specialized training program.''

(e) STCW Regulation V/2 requires certain personnel on ro-ro passenger ships to have completed ''approved training in crisis management and human behavior.''

(f) Section A–VI of the STCW Code refers to ''approved familiarization training'' for all persons employed or engaged on seagoing ships other than passengers, and to ''approved basic training or instruction'' for seafarers with designated safety or pollution-prevention duties.

(g) The table of competence for deck officers (A–II/1) refers to ''approved radar simulator and ARPA simulator training.''

(h) The tables of competence throughout part A of the STCW Code refer to ''approved training,'' ''approved simulator training'' and ''approved laboratory equipment training'' as alternative methods constituting evidence to prove a candidate's competence.

The Coast Guard's current course-approval system, as provided in §§ 10.301 to 10.307, applies only to specific mandatory courses such as firefighting, radar, and first aid or cardiopulmonary resuscitation, and to training used as a substitute for required service or for a written examination. There are almost 400 Coast-Guard-approved courses. (The procedures necessary to process course approvals appear (as outlined in NVIC 5–95, ''Marine Licensing Program's Quality Standards System for Approved Training''). An alternative system may be needed to regulate approved training conducted to meet STCW requirements but not used for remission of seagoing service under Part 10.

The Coast Guard is working with MERPAC to identify the criteria for instructors of approved courses. MERPAC is also looking at the relationship of these criteria to the overall requirements for monitoring

training under a quality-standards system that ensures the meeting of training objectives. Preliminarily, the MERPAC working groups engaged in these efforts have settled on a concept under which the Coast Guard would individually certify instructors and examiners whom it finds to meet professional and instructional experience. The status and content of MERPAC's recommendations on these criteria will influence the final rule.

The Coast Guard is including in this proposed rule an alternative to its current course-approval system. Proposed new § 10.309 rests on the principle of self-certification with minimum Coast Guard oversight based on acceptance by the Coast Guard of certain materials and procedures to maintain standards. In other words, completion certificates issued by training programs that meet the conditions stated in that section could be accepted as meeting the ''approved training'' requirements of STCW when such training is not being used for remission of seagoing service.

This could be done by a process like that used to credit ''approved seagoing service'' after the fact, on sufficient documentary proof. If the Coast Guard learned that the conditions set out in new § 10.309 were not being met by a particular training program, it would not accept certificates of completion as proof that the necessary training had been completed. The conditions for conducting approved training other than approved courses are set out in new § 10.309.

This proposal is intended to comply with the requirements of new STCW Regulations I/6 and I/8 of the 1995 Amendments. STCW Regulation I/6 concerns qualifications of those who train or assess the competence of seafarers; and STCW Regulation I/8 requires that training and assessment of seafarers be continuously monitored through a quality-standards system to ensure achievement of defined objectives, including those concerning the qualifications and experience of instructors and assessors.

The Coast Guard welcomes comments on this alternative approach, particularly with respect to (a) Coast Guard involvement in conducting oversight and maintenance of standards through a Coast-Guard-acceptance procedure and (b) specific training or instruction in instruction or assessment that those who instruct or assess candidates for STCW certificates or endorsements should be proficient in.

13. Radar Training

The Coast Guard would revise § 10.480 to require that radar simulators used in radar training meet the performance standards set out in section A–I/12 of the STCW Code.

14. Requirements for Radio Operators' Certificates

The Coast Guard would expand §§ 10.601 and 10.603 to cover certification or radio operators for service on ships required to participate in GMDSS. Candidates must meet the standard of competence set forth in STCW Regulation IV/2 of the 1995 Amendments.

This proposal is intended to complement that under § 10.205, which would require masters and mates to hold a Certificate for Operator of Radio in Global Maritime Distress and Safety System (GMDSS) if they serve on vessels that participate in GMDSS, and with FCC regulations in 47 CFR parts 13 and 80 also allows persons other than masters and mates to acquire radio operators certificates from the Coast Guard if they have the necessary training and have met standards of competence by means of an examination and practical demonstration.

The Coast Guard invites comment on the most effective process for implementing the Certificate requirements for GMDSS radio operator, particularly in light of section 365 of the Telecommunications Act of 1996 which promotes implementation of GMDSS on U.S. vessels.

15. Practical Demonstration

Subpart I of part 10 (§§ 10.901 through 10.950) is currently limited to identification of subjects in which candidates must be examined to qualify for certain licenses. Because qualification for STCW certificates or endorsements under the 1995 Amendments to the Convention will typically require candidates to prove their competence by means of both an examination and a demonstration of skills, the Coast Guard is proposing to expand § 10.901 to cover practical demonstrations.

Proposed new § 10.901 provision would incorporate by reference the tables in Part A of the STCW Code, with the effect of permitting candidates for U.S. licenses to demonstrate their competence by any of the methods authorized under those tables.

The table of subjects (a) adds subjects that will be treated under STCW; (b) highlights those subjects for which candidates must perform practical demonstrations; and (c) suggests subjects that can be removed from the table because not treated under STCW.

The Coast Guard is also proposing a new subsection to require that simulators used in assessment of competency or demonstration of continued proficiency must meet the appropriate performance standards set out in section A–I/12 of the STCW Code. However, simulators installed or brought into use before February 1, 2002, would be exempt from full compliance with these standards to the extent that they remained capable of meeting the objectives of the assessment of competence or demonstration of continued proficiency.

16. Ro-Ro Passenger Ships

The 1995 Amendments to STCW include new special provisions for personnel serving on ro-ro passenger ships. New STCW Regulation V/2 in Chapter V of the Annex, and section A–V/2 of the STCW Code, establish mandatory minimum standards for the training and certification of masters, officers, ratings (i.e., unlicensed seamen with certain ratings), and other personnel on ro-ro passenger ships.

Because there are a number of ro-ro passenger ships documented in the United States, of which six operate on international voyages between the United States and Canada, the Coast Guard is proposing to add a new subpart J in part 10, on ''Professional requirements for officers serving on ro-ro passenger ships,'' to implement STCW Regulation V/2 in the U.S. licensing system. Primarily, the new subpart would incorporate by reference STCW Regulation V/2 and section A–V/2 of the STCW Code. This proposed rule would apply only to U.S. Ro-Ro passenger ships to which SOLAS Certificates are issued. Comments on whether application should be expanded to other classes of U.S. ro-ro passenger ships may be submitted to the docket.

The International Maritime Organization (IMO) will be undertaking further work to clarify certain requirements under STCW Regulation V/2. In particular, the STCW of IMO will consider training in crisis management for masters and senior officers. Any recommendations that IMO ultimately adopts in this regard will influence the Coast Guard in approving training programs or course materials on this subject.

46 CFR Part 12—Certification of Seamen

1. Purpose of Regulations

The Coast Guard would revise § 12.01–1 to reflect that the purpose of part 12 is twofold. Part 12 is intended to provide, first, a means of determining the qualifications an applicant must possess to be eligible for certification to serve on U.S. merchants vessels and, second, a means of determining whether an applicant is competent under STCW to serve in a particular shipboard position. The Coast Guard is also proposing to indicate that new subpart 12.03 prescribes the requirements applicable to training and assessment associated with meeting the standards of competence under amended STCW.

2. Incorporation by Reference (§ 12.01–3)

The Coast Guard would introduce the necessary language in § 12.01–3 to allow technical requirements of the 1995 Amendments to STCW and to the STCW Code to be incorporated by reference into specific rules in Part 12.

3. Definitions

As noted in the discussion of § 10.103, the Coast Guard intends to maintain consistency in the definitions for identical terms used in parts 10 and 12. Consequently, the Coast Guard is proposing for § 12.01–6 a number of new definitions that correspond with those proposed for § 10.103. These comprise *approved training, Coast-Guard-accepted, designated examiner, practical demonstration, qualified instructor, STCW endorsement,* and *standard of competence.*

4. When Documents are Required

The Coast Guard would revise § 12.02–7 to require individuals serving in certain capacities on seagoing ships to hold STCW certificates or endorsement stating that they are so qualified.

5. General Provisions Respecting Merchant Mariner's Document (MMD)

The Coast Guard is proposing to revise § 12.02–11 to ensure that everyone qualified for an STCW certificate or endorsement is issued the appropriate certificate or endorsement when he or she is issued an MMD, or when the MMD is renewed or endorsed. One may be qualified to hold an endorsement for a rating forming part of a navigation or engineering watch, under STCW Regulation II/4 or III/4 and the corresponding section of the STCW Code (A–II/4 or A–III/4), without being qualified as an AB or QMED.

The Coast Guard is also proposing to allow the endorsement of an MMD to indicate that the holder has received the familiarization or basic safety-training required by chapter VI of STCW as amended. This would not be mandatory, but it should be a convenience to those who move from ship to ship, or company to company. As in the relevant parts of § 10.205, the Coast Guard would be able to approve courses which are designed for particular ships or types of service, within the limits allowed by STCW.

6. Medical Fitness

The Coast Guard is proposing to add a new subsection to § 12.02–17, requiring an applicant for an MMD to present documents issued by a qualified medical practitioner attesting the applicant's medical fitness to perform the functions for which the document is issued. There are currently no medical-fitness requirements for entry-level seamen.

This proposal is intended to comply with new STCW Regulation I/9 of the 1995 Amendments, which states that ''each party shall establish standards of medical fitness for seafarers, particularly regarding eyesight and hearing.'' For further discussion of medical fitness, refer to *General,* at page 9.

The Coast Guard invites comments on whether additional procedures or criteria belong in the rule to regulate medical fitness of entry-level seamen.

7. Approved Training Other Than Approved Courses

As discussed under § 10.309, the Coast Guard is proposing an alternative to the course-approval system, for accepting training programs as ''approved'' to satisfy STCW as amended. The proposal in § 12.03–1 is almost identical to the proposal in § 10.309 (with necessary editorial adjustments to fit in the context of Part 12). The conditions are intended to meet the quality-standards provisions of STCW as amended.

8. Able Seaman

The Coast Guard is proposing to revise the able seamen qualifications in Subpart 12.05 to conform with the requirements of the 1995 Amendments to STCW.

Section 12.05–3 would expand the reference to ''lifeboatman'' to include everyone with ''proficiency in survival craft and rescue boats.''

This section would also add a new subsection to require candidates for AB certificates for service on seagoing vessels to receive approved basic safety-training as set out in STCW Regulation VI/1 and section A–VI/1 of the STCW Code (i.e., personal survival techniques; firefighting and fire prevention; elementary first aid; and personal safety and social responsibilities). As in the relevant parts of § 10.205, the Coast Guard would be able to approve courses designed for particular ships or types of service, within the limits allowed by STCW. Also, as in § 10,209, an applicant for renewal of an MMD with an AB endorsement would have to prove that competency was assessed within the last 5 years, if instruction took place more than 5 years ago.

Section 12.05–3 would also require a candidate for an AB certificate for service on seagoing ships of 500 GT or more to meet the requirements of STCW Regulation II/4, and be qualified to hold an STCW certificate or endorsement for a rating forming part of a navigational watch. The standard of competence set out in section A–II/4 of the STCW Code would be incorporated by reference.

The table in section A–II/4 of the STCW Code includes a number of subjects areas (such as use of gyro compasses, change-over from auto-pilot, maintenance of a safe watch, knowledge of EPIRBs, and avoidance of false alerts) that are not currently required under § 12.05–9 (examination and demonstration of ability). That section would refer to the STCW table.

Also, each candidate would have to prove that he or she had a stated minimum of seagoing service including training and experience associated with navigational watchkeeping under the direct supervision of the Master, the officer in charge of the navigational watch, or a qualified rating.

The Coast Guard is also proposing to revise § 12.05–11 (general provisions respecting MMDs endorsed for able seaman) to indicate that, on seagoing ships of 500 GT ton and more, ABs who serve in navigational watchkeeping must hold STCW certificates or endorsements for a rating forming part of a navigational watch and be qualified in accordance with STCW Regulation II/4.

9. Lifeboatman

The Coast Guard is proposing to revise the lifeboatman qualifications in subpart 12.10 to conform with the requirements of the 1995 Amendments to STCW.

Section 12.10–3 would expand the reference to ''lifeboatman'' to include every mariner with ''proficiency in survival craft and rescue boats.'' This section would require candidates to (a) be at least 18 years of age and (b) have a minimum of 6 months of seagoing

service when associated with approved training.

This section would also add a new subsection to require a candidate for a certificate for lifeboatman or survival craft to receive approved basic safety-training as set out in STCW Regulation VI/1 and section A–VI/1, paragraph 2, of the STCW Code (i.e. personal survival techniques; firefighting and fire prevention; elementary first aid; and personal safety and social responsibilities). As in the relevant parts of § 10.205, the Coast Guard would be able to approve courses designed for particular ships or types of service, within the limits allowed by the STCW. Also, a candidate for renewal of an MMD with a lifeboatman endorsement would have to prove that competence was established within the last 5 years if instruction took place more than 5 years ago.

Section 12.10–5 would incorporate by reference the standard of competence set out in STCW Regulation VI/2 and section A–VI/2 of the STCW Code. This would expand the coverage under this section to such subjects as methods of starting survival-craft engines use of the fire extinguisher provided method of helicopter rescue, effects of hypothermia, use of rescue boats for persons in the sea, use of EPIRBS and pyrotechnic distress signals, and first aid for survivors. The Coast Guard would be able to approve courses designed for a particular class of ship or type of service, to take into account such conditions as small ships required only to carry liferafts. It would place an appropriate limitation on the certificate issued on the basis of such training.

The Coast Guard is proposing to delete § 12.10–7. Individuals qualified under STCW Regulation VI/2 must hold certificates stating they are qualified. However, by policy, the Coast Guard proposes to grandfather those who currently hold AB endorsements. Until August 1, 1998, it would issue to holders of MMDs with AB endorsements, endorsements for proficiency in survival craft when they renew their MMDs.

The Coast Guard is proposing to add a new § 12.10–9 on certificates of proficiency in fast rescue boats. This section would incorporate by reference both the requirements of STCW Regulation VI/2, paragraph 2, and the relevant portions of section A–VI/2 of the STCW Code, including table A–VI/2–2. Fast rescue boats are those that can sustain speeds of over 20 knots with crews of 3, and over 8 knots with full complements of persons and equipment.

The Coast Guard is also proposing to add a new § 12.10–11 for those designated to provide medical care on board ship. This section would incorporate by reference the requirements of STCW Regulation VI/4 and those of section A–VI/4 of the STCW Code. This allows individuals not already having to be trained in first aid under other regulations (e.g., § 10.205(h) for licenses and certificates of registry) to acquire endorsements to provide medical care on board ship.

10. Qualified Member of the Engine Department

The Coast Guard is proposing to revise the qualifications for qualified members of the engine department (QMEDs) in subpart 12.15 to conform with the requirements of the 1995 Amendments to STCW.

Section 12.15–3 would get a new subsection to require candidates for QMED certificates for service on seagoing vessels driven by main propulsion machinery of 750 kW [1,000 hp] of propulsion power or more to receive approved basic safety-training as set out in STCW Regulation VI/1 and section A–VI/1 of the STCW Code (i.e., personal survival techniques; firefighting and fire prevention; elementary first aid, and personal safety and social responsibilities, including pollution prevention). As in the relevant parts of §§ 10.205 and 12.05–3, the Coast Guard would be able to approve courses designed for particular ships or types of service, within the limits allowed by the STCW. Also, as in § 12.05–3, an applicant for renewal of an MMD with a QMED endorsement would have to prove that competency was assessed within the last 5 years if instruction took place more than five years ago.

Section 12.15–3 would also require candidates for QMED certificates for service on seagoing vessels driven by main propulsion machinery of 750 kW [1,000 hp] of propulsion power or more to meet the requirements of STCW Regulation III/4, and either be qualified to hold an STCW certificate or endorsement for a rating forming part of a watch in a manned engine-room or be designated to perform duties in a periodically unmanned engine-room. The standard of competence set out in section A–III/4 of the STCW Code would be incorporated by reference.

The table in section A–III/4 of the STCW Code includes a number of subjects (such as engine-room watchkeeping and knowledge of escape routes from machinery spaces) not currently covered under § 12.15–9.

Section 12.15–7 would require a minimum of seagoing service performing duties associated with engine-room watchkeeping under the direct supervision of a qualified engineer officer or of a member of a qualified rating.

Section 12.15–9 would refer to table A–III/4 of the STCW Code, and would require practical demonstration of abilities.

Section 12.15–11 would indicate that, on seagoing vessels driven by main propulsion machinery of 750 kW [1,000 hp] of propulsion power or more, QMEDs who serve in a watchkeeping capacity in a manned engine-room or are designated to perform duties in a periodically unmanned engine-room must hold STCW certificates or endorsements stating that they are qualified in accordance with STCW Regulation III/4.

11. Electronics Technician

The Coast Guard would establish a new rating under part 12 by adding a section to Subpart 12.25 (Certificates of service for ratings other than AB or QMED). New § 12.25–45 would allow an individual to hold a certificate or MMD stating that he or she is qualified to serve as an electronics technician on board a vessel.

Section 12.25–45 would require candidates for this endorsement to provide sufficient proof of competence. This would comprise (a) a certificate of completion from a Coast Guard-approved training program that includes instruction and assessment by qualified instructors and designated examiners, and makes the student complete appropriate examinations and practical demonstrations to establish competence in the basic skills, knowledge, and understanding necessary to perform maintenance, diagnosis, and repair of electronic equipment and installations on board ships, in accordance with the manuals normally provided for such equipment and installations and (b) a certificate of completion from a course approved by the FCC or Coast Guard and covering at least the scope and content of training outlines in the relevant sections of B–IV/2 of the STCW Code relating to maintenance of GMDSS installations on board ships.

Under § 12.25–45 an individual could receive an electronic-technician rating without completing the GMDSS course. However, in that case, the endorsement would contain a limitation to the effect that the individual could not serve as the person designated to perform at-sea maintenance of GMDSS installations when such a person was necessary to meet the maintenance requirements imposed by SOLAS Regulation IV/15 (i.e., ''electronics technician—non-GMDSS)''. When at-sea maintenance is

to be used as a means of meeting the SOLAS requirement for maintenance of GMDSS, the person designated to perform the maintenance must have an electronics-technician endorsement, without the limitation. While this proposed rule would establish an electronics-technician endorsement in part 12, the intent is not that there be any restriction on the ability of a licensed engineer to acquire the endorsement. The Coast Guard solicits comments on whether Part 10 should include additional requirements on electronics as a shipboard skill or responsibility, particularly in light of section 365 of the Telecommunications Act of 1996 which promotes the implementation of GMDSS on U.S. vessels.

12. Qualifications for Service on Ro-Ro Passenger Ships

The Coast Guard would add a new subpart (§ 12.30) under part 12 to establish requirements for certification (i.e., by endorsement of an MMD) of unlicensed seamen for service on ro-ro passenger ships. The requirements would essentially incorporate by reference the provisions of STCW Regulation V/2 as they relate to personnel with specific duties on such ships, and those with duties for care of passengers. The proposed rule would apply only to U.S. ro-ro passenger ships to which SOLAS certificates are issued. Comments on whether application should be expanded to other classes of ro-ro passenger ships may be submitted to the docket.

46 CFR Part 15—Manning Requirements

The 1995 Amendments to STCW contain a number of provisions that affect manning and watchkeeping on seagoing vessels, as well as conditions that must be met before crewmembers can be assigned to duties. The Coast Guard is proposing to revise part 15 to incorporate these new requirements on U.S. merchant vessels that operate seaward of the boundary line.

1. Incorporation by Reference (§ 15.105)

The Coast Guard would introduce the necessary language in § 15.105 to allow technical requirements of the 1995 Amendments to STCW and to the STCW Code to be incorporated by reference into specific rules in part 15.

2. Definitions (§ 15.301)

The Coast Guard would revise this section to reflect changes proposed in parts 10 and 12. For example, a reference to *GMDSS radio operator, electronics technician—non-GMDSS*, and *electronics technician* must each be added to paragraph (b) or (c).

3. Employment and Service Within Restrictions of License or Document (§ 15.401)

The Coast Guard would expand this section to include references to STCW certificates and endorsements. The section would also propose that, as of February 1, 2002, only persons with the appropriate training and certification as GMDSS radio operators be employed or engaged as masters, chief mates, or officers in charge of navigational watches on ships required to participate in the GMDSS system under SOLAS Chapter IV. Additionally, only persons trained in the use of ARPA could be employed or engaged as masters, chief mates, officers in charge of navigational watches, or operators of uninspected passenger vessels on vessels fitted with ARPA. These requirements would complement those for §§ 10.205 and 10.209.

Section 15.401 would also, as of February 1, 2002, let only persons holding electronic-technician endorsements not limited to non-GMDSS electronics installations be designated to perform at-sea maintenance of GMDSS installations, when such designation is used to meet the maintenance requirements imposed by SOLAS Regulation IV/15. This would complement the proposal for § 12.25–45.

Section 15.401 would also allow only those with proper training under subpart J of part 10 and § 12.24–30 of part 12 to be employed or engaged on ro-ro passenger ships.

4. Familiarization and Basic Safety-Training (§ 15.403)

The Coast Guard would implement STCW Regulation VI/1 of the 1995 Amendments by adding new § 15.403 to Part 15 on familiarization and basic safety-training. The section would propose that after February 1, 1997 no person may be assigned to perform any duties on a seagoing vessel unless he or she has received approved familiarization training in personal survival or has received sufficient information and instruction in a number of subjects affecting personal safety, in accordance with A–VI/1 of the STCW Code.

This section would also state that no person may be employed or engaged in any capacity on board a seagoing vessel in the business of that vessel as part of the crew with designated duties for safety or pollution prevention in the operation of the ship unless he or she has received approved basic safety-training or instruction in accordance with A–VI/1 of the STCW Code. Designated duties for safety include those associated with fire-team emergency squads and with assisting passengers in emergencies.

Additionally, this section would provide that no person may perform duties on board a seagoing vessel unless he or she has received the required familiarization training or instruction, or has achieved the required standard of competence through basic safety-training, as appropriate.

Under the relevant parts of §§ 10.205 and 12.02–11, the Coast Guard would be able to approve training designed for particular ships or types of service, within the limits allowed by STCW.

One comment submitted to the docket following the public meeting in August expressed concern about the application of these requirements of familiarization and basic safety-training to personnel serving on MODUs. Again, to the extent a MODU was a seagoing ship under STCW, the implementing regulations being proposed at this time would apply to its personnel. On the other hand, in approving specific training, the Coast Guard will take into consideration, and use as the basis for its evaluation, any IMO resolutions that provide special guidance on the training of personnel on MODUs.

5. Maintenance of Seamen's Records by Owner or Operator (§ 15.411)

STCW Regulation I/14 of the 1995 Amendments requires Administrations to impose certain responsibilities on companies that own or operate seagoing vessels. These responsibilities are fundamental to good management, are consistent with the principles reflected in the International Management Code for Safe Operation of Ships (ISM Code), and are to a large extent already covered by domestic regulations.

For example, the obligation under item 1.1 of STCW Regulation I/14, concerning the need to ensure that each seafarer holds the appropriate STCW certificate, is addressed by 46 CFR 15.401. The obligation in item 1.2 of STCW Regulation I/14, concerning compliance with manning requirements, is addressed by 46 CFR 15.401 and 15.515, and to some extent by 46 CFR 15.801, with statutory support (e.g., 46 U.S.C. 8101 (c) and (f) and 8104(j)). Similarly, the object of item 1.4 of STCW Regulation I/14, ensuring that seafarers are familiar with ship-specific arrangements, equipment, and so forth, before being assigned to duties, is already addressed in 46 CFR 15.405.

But, because § 15.405 does not explicitly require companies to ensure

that a level of familiarity has been achieved, the Coast Guard is inviting comment on whether it should be revised. If so, the Coast Guard also invites comments on whether the term *company* (or, alternatively, the term *owner or operator*) should be defined in Part 15. The Coast Guard also invites comments on how § 15.405 should be revised to effectively implement paragraph 2 of section A.I/14 of the STCW code, which states the following:

> The company shall provide written instructions to the master of each ship to which the Convention applies, setting forth the policies and the procedures to be followed to ensure that all seafarers who are newly employed on board the ship are given a reasonable opportunity to become familiar with the shipboard equipment, operating procedures and other arrangements needed for the proper performance of their duties, before being assigned to those duties.

To some extent, the requirements for maintaining certain records, as set out in item 1.3 of STCW Regulation I/14, are already addressed by statutory and regulatory provisions on shipping articles and other records of seamen (e.g., 46 U.S.C. 10302, 10320, and 10502 and 46 CFR part 14). Additionally, it is considered routine practice for U.S. companies that employ seaman to maintain a personnel record for each employee, or to ensure that one is maintained by an agency acting on behalf of the company in such matters (such as a labor union that has entered into a collective-bargaining agreement).

Taking the above into account, the rule proposed as § 15.411 focuses on the recordkeeping requirements in STCW Regulation I/14 of the 1995 Amendments. The object is to allow companies a suitable range of flexibility for complying with these requirements in a manner most consistent with good management. Furthermore, the policy of the Coast Guard will be to presume, in the absence of information to the contrary, that companies holding valid ISM certificates, issued in accordance with the appropriate international, and domestic regulations, are fulfilling their obligations under STCW Regulation I/14.

One comment submitted in response to the notice published on August 2, 1995 [60 FR 39306], asked that the requirements of item 1.4 of STCW Regulation I/14 (on familiarization with specific equipment and procedures) not be extended to apply to duties of industrial personnel on industrial vessels (e.g., MODUs) or research crew on research vessels. The Coast Guard would not expect this proposed rule to impose an unreasonable obligation on companies that employ such personnel. However, in keeping with earlier statements in this preamble, the Coast Guard recognizes that IMO will be giving further consideration to issues of industrial personnel. Therefore, the proposals relating to paragraph 1.4 of STCW Regulation 1/14 should be understood not to apply to industrial personnel on MODUs or research personnel on research vessels. Such personnel, however, would be subject to the familiarization and basis safety training requirements, of STCW Regulation VI/I, as described in section 4.

6. Watchkeeping Arrangements

The Coast Guard is proposing to revise § 15.705 (Watches) by requiring masters on seagoing vessels to observe the principles on watchkeeping arrangements set out in STCW Regulation VIII/2 of the 1995 Amendments.

7. Workhours and Rest Periods

The Coast Guard is proposing to implement the rest-hour requirements of STCW Regulation VIII/1 of the 1995 Amendments, and of section A–VIII/1 of the STCW Code, by adding new subparagraphs to § 15.710. Essentially, the STCW Amendments will require that every person assigned duty as an officer in charge of a watch or as a rating forming part of a watch shall receive a minimum of 10 hours of rest in any 24-hour period. These 10 hours of rest may be divided into two parts as long as one segment is at least 6 hours.

Deviation from the requirement for 10 total and 6 continuous hours of rest is permissible in the case of ''an emergency or drill or in other overriding operational conditions.'' Additionally, the 10 hours of rest in a 24-hour period may drop to 6 consecutive hours in a 24-hour period over 2 days, as long as the watch-keeper receives 70 hours of rest in each 7-day period. Watch schedules that ensure compliance with these rest-hour requirements must be posted when they are easily accessible to watchkeeping personnel and to port-control officers in foreign ports.

Section B–VIII/1 of the STCW Code provides some guidance on the meaning of the terms used in section A–VIII/1, and on the correct interpretation of the rest-hour requirements when calculating workhours outside of the periods of watchkeeping responsibility. For instance, it construes the phrase ''overriding operational conditions'' to mean ''only essential shipboard work which cannot be delayed for safety or environmental reasons or which could not reasonably have been anticipated at the commencement of the voyage.''

The guidance in section B–VIII/1 of the STCW Code also states that the minimum rest periods should not be interpreted as implying that all other hours may be devoted to watchkeeping or other duties. It also invites administrations to consider a requirement for recordkeeping to ensure compliance with that for hours of the rest.

One comment submitted in response to the notice published on August 2, 1995 [60 FR 39306], expressed concern that an individual serving in a two-watch rotation on a towing vessel would be considered unfit for duty if he or she got only 5 hours of sleep in one 6-hour off-duty period, and 2 hours of sleep in the next off-duty period. The Coast Guard does not view the rest-hour requirements of STCW as mandating a period in which the individual concerned is actually in his or her bunk asleep. However, over any period of 24 hours, the watchkeeping personnel must be provided the opportunity for an uninterrupted period of rest for at least 6 hours, and an additional 4-hour period during which no duties are assigned or performed. The operative word is ''opportunity''. This would not prevent a person from attending to routine personal affairs, or engaging in recreational or other off-duty activities.

Another comment submitted on this matter suggested that the rest-hour requirements of STCW could have an adverse impact on the operation of towing vessels and small passenger vessels because it would permit a 14-hour workday or a 98-hour workweek, in violation of U.S. statutory and regulatory provisions that limit the number of hours a seaman may be required to work.

Note, however, that the introduction of a rest-hour requirement into U.S. regulations would not change any existing work-hour limits or rest-hour requirements that apply to personnel on U.S. vessels. Limits that apply to seagoing ships under 46 U.S.C. 8104 and 46 CFR 15.705 and 15.710 would remain fully in effect. Additionally, operators of towing vessels and tankers already have to comply with both the work-hour limits under 46 U.S.C. 8104(h) and 8104(n), respectively, and the rest-hour requirements under STCW and 46 U.S.C. 8104(a).

In any specific set of circumstances, the stricter rule would apply. For example, although the rest-hour requirements proposed here would technically permit the operator of a seagoing towing vessel to stand watch for up to 14 hours a day, 46 U.S.C. 8104(h) would limit the operator to no more than 12 hours in a 24-hour period.

Similarly, although 46 U.S.C. 8104(n) technically permits a mate on a tanker to work up to 15 hours in a 24-hour period, the rest-hour requirements proposed here would limit his or her periods of duty to not more than 14 hours in that same 24-hour period, unless there were an emergency or other overriding operational condition; and then an adjustment would subsequently be necessary to ensure that the mate received 70 hours of rest in 7 days.

Although calculating work and rest may be complex under some non-routine circumstances, the Coast Guard considers the STCW rest-hour requirements of STCW and the existing work-hour limits in U.S. statutes and regulations to be compatible and enforceable, and in keeping with the object of safe watchkeeping.

Further comment to the docket is welcome, on the implementation of the rest-hour requirement, and particularly on the extent to which the terms *rest hours and overriding operational conditions* should be clarified or interpreted either in this proposed rule itself or in the policy on its enforcement. Comment is also welcome on the kinds of shipboard activity (such as personal housekeeping) that should be allowed to watchkeeping personnel who are off duty and on the need for recordkeeping to ensure compliance with the rest-hour requirements.

Incorporation by Reference

The following material would be incorporated by reference in §§ 10.102, 12.01–3, and 15.105: Amendments to the Annex to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, and the associated Seafarers' Training, Certification and Watchkeeping (STCW) Code, as adopted under resolutions 1 and 2, respectively, by the Conference of Parties to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, held at IMO from June 26 to July 7, 1995.

Copies of the material are available for inspection where indicated under **ADDRESSES**. Copies of the material are also available from IMO, 4 Albert Embankment, London, SE1 7SR, England, telephone in London 0171–735–7611.

Before publishing a final rule, the Coast Guard will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

Regulatory Evaluation

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

A preliminary regulatory assessment has been prepared and is available for inspection where indicated under **ADDRESSES.**

The regulatory assessment is preliminary at this stage. The Coast Guard published a notice of inquiry on November 13, 1995 [60 FR 56970], to solicit information that would be useful in calculating the costs and benefits of implementing the 1995 Amendments to STCW. Some of those calling the Coast Guard to discuss the notice said they could not give a detailed or accurate assessment of impacts until they had seen the specific proposals. Others indicated they did not foresee a cost impact since they felt that their current practices and procedures generally conformed with the requirements of the amendments to STCW.

To a great extent, the STCW revisions are introducing, as requirements, practices already successfully promoted through the current U.S. regulations (e.g., use of approved training, and the use of simulators in training as predicates of remission of seagoing service). In most cases, the new requirements would involve modification or enhancement of existing training and oversight rather than establishment of new programs.

The Coast Guard estimates that the proposal will affect approximately 19,500 seafarers over a 5-year period. The estimated composition of this group is 10,335 deck and other officers, 1,755 engineering officers, 3,900 able seamen, and 3,510 qualified members of the engineering department.

The approximate vessel population that operate outside the boundary line and may be affected by the proposed regulation are 136 MODUs; 95 industrial vessels; 271 freight ships; 103 oil recovery vessels; 696 offshore supply vessels; 20 passenger vessels; 2,112 small passenger vessels; 14 research vessels; 14 maritime school ships; 162 tank ships; 15 towboats and tugboats; 462 tank barges; 3 ferries; and 486 freight barges.

Costs

The Coast Guard estimates that costs fall into the following categories: medical fitness, training costs, training infrastructure costs, company and/or owner/operator costs, and government costs.

The Coast Guard estimates that approximately 12,000 seafarers apply for MMDs annually. Approximate costs of $1,900,000 annually are estimated for mariners certifying their medical fitness when applying for an MMD.

Deck, radio, and other officers will be required to demonstrate competency and knowledge in a combination of courses including GMDSS, ARPA, Personal Survival, Personal Safety and Social Responsibility, and Bridge Teamwork. The Coast Guard estimates that as many as 4,091 officers may be affected annually while the proposed regulation has a high level of flexibility built into it for mariners, the Coast Guard has assumed that mariners will attend formal, classroom courses to comply with the requirements. Annual training costs for deck, radio, and other officers are estimated at $21,804,580.

Engineering officers will be required to demonstrate competence and knowledge in a combination of courses including Personal Survival, Personal Safety and Social Responsibility, and Electronic and Control Engineering. The Coast Guard estimates that as many as 645 engineering officers may be affected annually. Annual training costs for engineering officers are estimated at $3,247,575.

ABs will be required to demonstrate competence and knowledge in a combination of courses including Personal Survival, Personal Safety and Social Responsibility, Shipboard Orientation, Firefighting and Fire Prevention, and estimates that as many as 1,369 ABs may be affected annually. Annual training costs for ABs are estimated at $11,568,050.

QMEDs will be required to demonstrate competence and knowledge in a combination of courses including Personal Survival, Personal Safety and Social Responsibility, Shipboard Orientation, and Firefighting and Fire Prevention. The Coast Guard estimates that as many as 1,253 QMEDs may be affected annually. Annual training costs for QMEDs are estimated at $7,580,650.

Ro/Ro personnel will be required to attend specialized training including crowd management, passenger safety, cargo safety, and hull integrity. The Coast Guard estimates that this may affect 225 Seafarers every 5 years. Estimated annual cost is $67,500.

The Coast Guard has estimated a new electronics technician rating for vessels equipped with GMDSS. Electronic technicians will be required to demonstrate competence and knowledge to perform maintenance,

diagnosis and repair of electronic equipment and installations. The Coast Guard estimates that this may affect 1,128 Seafarers. The Coast Guard has estimated this as a one-time cost of $6,204,000.

The Coast Guard has determined that training infrastructure costs include QSS, Approved Instructor, Designated Examiner, Capital Investments, and Course Development.

For QSS, the Coast Guard estimates that 100 training institutions may be affected at an initial cost of $7,500, $1,000 annual maintenance costs, and an independent evaluation estimated at $5,000. Total cost is estimated at $1,750,000.

For Approved Instructors, the Coast Guard estimates that 1,500 instructors at 100 training institutions may be affected. Annual approved instructor costs are estimated at $1,500,000.

For Designated Examiners, the Coast Guard estimates each will be required to provide 20 hours of service. Annual designated examiner costs are estimated at $3,900,000 for 1997 through 2001 and $780,000 for 2002 through 2003.

The Coast Guard has determined that there are likely to be some GMDSS and ARPA Capital Investments necessary by training institutions to accommodate the anticipated annual through-put of deck and other officers. A one-time cost of $3,160,000 is estimated.

The Coast Guard has determined that there are likely to be some course-development costs associated with the proposed rulemaking. A one-time cost of $889,000 is estimated.

The Coast Guard has determined that costs for companies and for owners and operators are likely to include those associated with rest-hour and recordkeeping requirements.

The Coast Guard has determined that rest-hour requirements are likely to affect 83 vessels annually. Crew augmentation costs for these vessels is estimated at $2,120,650 annually.

The Coast Guard has determined that records on Seafarer training and competence, medical fitness, and rest hour requirements will be required. The Coast Guard estimates that this will likely affect 19,500 seafarers annually at an estimated cost of $1,462,500.

The Coast Guard does not anticipate any additional costs in implementing the regulation at this time.

Total Costs

Costs of the proposal are forecast to 2003. The Coast Guard estimates that these requirements will be fully integrated into the marine infrastructure by 2003 and, thus, a regular part of doing business. Costs are estimated at $45,789,021 in 1997, $36,218,521 in 1998, $35,568,521 in 1999 through 2001, $12,767,724 in 2002, and $13,200,224 in 2003. The present value of the costs of this proposed regulation discounted at 7 percent to 1997 would total $172,685,673.

Benefits

The Coast Guard has determined that the proposed rule has potential economic benefits and a potential to reduce marine casualties.

Economics play a significant role in safety. While the U.S. commercial fleet has long been among the safest in the world, differences between U.S. standards and those of other maritime nations put our vessels at a competitive disadvantage. Responsible operators can be forced to operate with lower profit margins and less capital to invest in safe operations, and in some cases forced out of the market entirely. More aggressively holding all ships to the same standards set for U.S. ships is key to shifting the balance. This proposal would allow the U.S. to hold mariners aboard all vessels entering its ports to the same competency standards which the U.S. holds its own vessels, without foreign retaliation. Consequently, U.S. vessels visiting foreign ports would not be faced with increased scrutiny that could result in costly vessel delays. Such delays would otherwise likely decrease the value of trade carried in U.S. bottoms. Conversely, under this proposal, the U.S. could expect to increase its market share of cargo carried which could result from the more even competitive playing field accorded U.S. and foreign fleets because of this proposal. Appendix F provides a summary of the value of U.S. international trade and ocean trade worldwide.

U.S. ships only carry about 8 percent of the value of U.S. export trade and 7 percent of the value of U.S. import trade. If, as a result of complying with international standards proposed in this rulemaking, U.S. vessels gain one tenth of one percent of the value of U.S. international trade in any given year of implementation (approximately $56,000,000), the annual benefits will outweigh the costs.

On average, there were 29 fatalities and 76 injuries annually as a result of errors that potentially could be linked to training deficiencies. The training required by this proposal has the potential to significantly decrease the number of fatalities and injuries in maritime transportation. Based on the $27,700,000 value of a human life, if this proposal causes a reduction in the number of fatalities by 17 in 1997, 13 in 1998–2001, and 55 in 2002–2003, the benefits will exceed the costs.

The complex cumulative effect of human error makes it difficult to quantify the exact benefits of the proposed rulemaking. One way to reduce the risks associated with human error in operating seagoing ships is to ensure that seafarers maintain the highest practicable standards of training, certification, and competence. The proposal is intended to reduce the risk of maritime casualties and pollution incidents caused by human error. Benefits are expected to accrue from a reduction of shipboard accidents and injuries because personnel will have an increased awareness of safe shipboard practices. As the Coast Guard reviews comments resulting from the proposal and formulates a final rule, further review of benefits based on risk is anticipated.

Small Entities

Under the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*], the Coast Guard must consider whether this proposal, if adopted, would have a significant economic impact on a substantial number of small entities. ''Small entities'' may include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under Section 3 of the Small Business Act (15 U.S.C. 632). ''Small entities'' also include small not-for-profit organizations and small governmental jurisdictions.

The proposed rule has built in sufficient flexibility and options to allow small entities to comply with its proposed requirements at modest cost. For the most part, it is expected to affect only large business enterprises and individuals mariners. There is no requirement that one entity perform all the STCW training and assessment requirements that are being proposed.

Those small entities engaged in training may choose to obtain assessment from individual qualified assessors who may also be organized as small entities. The Coast Guard does not limit the arrangements as to who may offer instruction or assessment. Any combination may be used by a mariner to achieve the desired qualifications licenses, or certificates.

The proposed rule applies to individual mariners and allows for small entities to remain in and actively compete in the maritime-training sector of the maritime industry with options to teach and assess as many courses or functions as any entity chooses. The proposal covers requirements that

would not begin to go into effect until early 1997, through the phase-in period.

Because of these accommodations and characteristics, the Coast Guard certifies under 5. U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities.

Collection of Information

Under the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*], the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection-of-information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection-of-information requirements include reporting, recordkeeping, notification, and other, similar requirements.

This proposal contains collection-of-information requirements in the following sections: 10.304 (training and assessment-record books); 10.309 and 12.03–1 (approved training); and 15.411 (maintenance of seamen's records by owner or operator). The following particulars apply:

Training conducted on board ships, when part of an approved program based on 1 year of seagoing service for deck licenses (6 months for engineer licenses), would have to make use of a training- and assessment-record book to document that required training and assessment of competency has been completed properly. The books would be submitted to the Coast Guard as part of an application for a license.

The QSS that would monitor training and assessment to ensure that they were meeting objectives would compel organizations offering training to document certain information and to maintain records for 1 year. The records would cover such matters as the course syllabus, students performance, and the qualifications of instructors and examiners. Additionally, an independent evaluation would need to be documented periodically. Records would be subject to review by the Coast Guard in its oversight function to ensure that training and assessment satisfy minimum conditions.

The proposed rule would allow for wide variation in the means for complying with new requirements to ensure that the scope of the QSS is reasonably related to the scope of training and assessment conducted by the entity concerned.

Companies owning or operating U.S.-documented seagoing vessels would have to arrange for the maintenance of certain records concerning the medical fitness, experience, training, and competence, of the seamen employed or engaged on their ships. The records could be maintained by a third party on behalf of the company, but they would need to be readily accessible to those in management responsible for the safety of vessel operations and the prevention of marine pollution. The recordkeeping requirement would be in effect only during the period of service of the seaman concerned.

The proposed rest-hour schedule would require documentation necessary for the safe operation of the vessel. This would ensure that the crew was informed of rest-hour requirements.

The proposed recordkeeping generally reflects routine practices for U.S. ship-operating companies and training institutions. However, the international rules in STCW were drafted to apply to companies and training programs worldwide. In due course, by its obligation under STCW as amended, the United States must demonstrate to the IMO that it has in place certain specific regulations that implement the international rules.

Dot No: 2115.

Administration: U.S. Coast Guard.

Title: Implementation of the 1995 Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW).

Need for Information: To ensure compliance with international requirements, and to maintain an acceptable level of quality in the training and assessment of merchant mariners.

Proposed use of Information: The Coast Guard would have access to information to monitor compliance with regulations and to identify where corrective action may be needed. Coast Guard officials involved in issuing licenses, documents, and STCW certificates would have a reliable source for determining whether training and assessment had been completed by candidates in accordance with domestic and international rules.

Frequency of Response: Under this proposed rule, records would have to be maintained for 1 year. In one case a certification of continued compliance would have to be provided to the Coast Guard once a year.

Burden Estimate: 40,215 hours.

Respondents: 28,645.

Form(s): N/A.

Average Burden-Hours per Respondent: 1.4 hours.

The Coast Guard has submitted the requirements to OMB for review under § 3504(h) of the Paperwork Reduction Act. Persons submitting comments on the requirements should submit their comments both to OMB and to the Coast Guard where indicated under **ADDRESSES**.

Federalism

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

This rulemaking should not have a direct impact on State, local, or tribal governments. However, States that operate or charter maritime-training institutions would have to bring the relevant training programs into line with the new requirements. For the most part, the existing State-sponsored maritime-training institutions have programs that would need little adjustment to meet the new requirements. And the accreditation process for these institutions should satisfy the new quality-assurance provisions.

Environment

The Coast Guard considered the environmental impact of this proposed rule proposal and concluded that, under paragraph 2.B.2.e(34)(C) of Commandant Instruction M16475.1B, this rulemaking is categorically excluded from further environmental documentation.

This rulemaking would have no direct environmental impact. The implementation of the 1995 Amendments to STCW should reduce the risk that human error will result in a maritime casualty or pollution incident by ensuring that seafarers on seagoing ships are meeting the highest practicable standards of competence. However, there are few objective criteria for quantifying the reduction in this risk. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects

46 CFR Part 10

Fees, Marine safety, Incorporation by reference, Reporting and recordkeeping requirements, Schools, Seamen, Vessels.

46 CFR Part 12

Fees, Marine safety, Incorporation by reference, Reporting and recordkeeping requirements, Schools, Seamen, Vessels.

46 CFR Part 15

Marine safety, Navigation (water), Incorporation by reference, Reporting and recordkeeping requirements,

Schools, Seamen, Vessel manning, Vessels.

For the reasons set out in the preamble, the Coast Guard proposes to amend 46 CFR parts 10, 12, and 15 as follows:

PART 10—LICENSING OF MARITIME PERSONNEL

1. the authority citation for part 10 continues to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2103, 7101, 7106, 7107; 49 CFR 1.45, 1.46; § 10.107 also issued under the authority of 44 U.S.C. 3507.

2. Section 10.101 is amended by revising paragraphs (a) and (c) to read as follows:

§ 10.101 Purpose of regulations.

(a) The purpose of the regulations in this part are to provide—

(1) A comprehensive means of determining the qualifications an applicant must possess to be eligible for a license as deck officer, engineer, pilot, radio officer, or radio operator on merchant vessels, or for a license to operate uninspected towing vessels or uninspected passenger vessels, or for a certificate of registry as staff officer; and

(2) A means of determining that an applicant is competent to serve as a master, chief mate, officer in charge of a navigational watch, chief engineer officer, second engineer officer, officer in charge of an engineering watch, designated duty engineer, or radio operator, in accordance with the provisions of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW), and to receive the appropriate certificate or endorsement as required by STCW.

* * * * *

(c) The regulations in subpart C of this part prescribe the requirements applicable to—

(1) Each approved training course if the training course is to be acceptable as a partial substitute for service or for a required examination, or as training required for a particular license or license endorsement; and

(2) All training and assessment associated with meeting the standards of competence established by STCW.

3. Section 10.102 is added to read as follows:

§ 10.102 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the Federal Register and the material must be available to the public. All approved material is available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC, and at the U.S. Coast Guard, Operating and Environmental Standards Division, 2100 Second Street SW., Washington, DC 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are as follows:

International Maritime Organization (IMO)

4 Albert Embankment, London, SE1 7SR, England.

Amendments to the Annex to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW), and the associated Seafarers' Training, Certification and Watchkeeping Code (STCW Code), as adopted under resolutions 1 and 2, respectively, by the Conference of Parties to the International Convention of Standards of Training, Certification and Watchkeeping for Seafarers, 1978, held at IMO from June 26 to July 7, 1995—10.103; 10.205; 10.304; 10.480; 10.602; 10.901.

4. Section 10.103 is amended by adding in alphabetical order the following new definitions to read as follows:

§ 10.103 Definitions of terms used in this part.

Approved training means training that is approved by the Coast Guard or meets the requirements of § 10.309.

* * * * *

Coast-Guard-accepted means that the Coast Guard has officially acknowledged in writing that the material or process at issue meets the applicable requirements; that the Coast Guard has issued an official policy statement listing or describing the material or process as meeting the applicable requirements; or that an entity acting on behalf of the Coast Guard under a Memorandum of Agreement has determined that the material or process meets the applicable requirements.

* * * * *

Designated examiner means an individual who has been trained or instructed in techniques of training or assessment and is otherwise qualified to evaluate whether a candidate for a license, document, or endorsement has achieved the level of competence required to hold the license, document, or endorsement. This individual may be designated by the Coast Guard or by a Coast-Guard-approved program of training or assessment.

* * * * *

Practical demonstration means the performance of an activity under the direct observation of a designated examiner for the purpose of establishing that the performer is sufficiently proficient in a practical skill to meet a specified standard of competence or other objective criterion.

Qualified instructor means an individual who has been trained or instructed in instructional techniques and is otherwise qualified to provide required training to candidates for licenses, documents, and endorsements.

* * * * *

Standard of competence means the level of proficiency to be achieved for the proper performance of duties on board vessels in accordance with national and international criteria.

STCW endorsement means a certificate or endorsement issued in accordance with the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW). An STCW endorsement issued by the Officer in Charge, Marine Inspection, will be valid only when accompanied by the appropriate U.S. license or document; and, if the license or document is revoked, then the associated STCW endorsement will no longer be valid for any purpose.

* * * * *

5. In § 10.107, paragraph (b)(3) is added to read as follows:

§ 10.107 Paperwork approval.

* * * * *

(b) * * *

(3) OMB 2115—46 CFR 10.304, 10.309.

6. In § 10.201, paragraph (a) is revised to read as follows:

§ 10.201 Eligibility for licenses and certificates of registry, general.

(a) The applicant shall establish to the satisfaction of the Officer in Charge, Marine Inspection (OCMI), that he or she possesses all of the qualifications necessary (e.g., age, experience, character references and recommendations, physical examination, citizenship, approved training, passage of a professional examination, as appropriate, and, when required by this part, a practical demonstration of skills) before the OCMI will issue a license or certificate of registry.

* * * * *

7. In § 10.202, paragraph (j) is added to read as follows:

§ 10.202 Issuance of licenses and certificates of registry.

* * * * *

(j) When an original license is issued, renewed, upgraded, or otherwise modified, the Officer in Charge, Marine Inspection (OCMI), will determine whether the holder of the license must hold an STCW certificate or endorsement for service on a seagoing vessel and, if so, and if the holder is qualified, will issue the appropriate certificate or endorsement. The OCMI will also issue an STCW certificate or endorsement at other times, if circumstances so require and if the holder of the license is qualified to hold the certificate or endorsement.

8. In § 10.205, paragraph (g) is revised, and paragraphs (k), (l), (m), (n), (o), and (p) are added, to read as follows:

§ 10.205 Requirements for original licenses and certificates of registry.

* * * * *

(g) *Firefighting certificate.* (1) Applicants for licenses in the following categories shall each present a certificate of completion from an approved course or approved training in firefighting. The course must be sufficient to establish that the applicant meets the standard of competence in basic and advanced firefighting set forth in STCW Regulations VI/1 and VI/3. The course must have been completed 5 years or less before the date of application for the license requested:

(i) All masters' or mates' licenses for service on vessels in ocean or near-coastal service.

(ii) All licenses for operators of uninspected passenger vessels for service beyond the boundary line.

(iii) All licenses for service on mobile offshore drilling units.

(iv) all engineers' licenses.

(2) The officer in charge, Marine Inspection (OCMI), may accept a certificate of completion from an approved course or approved training in firefighting designed for a particular ship or type of service; however, in that case, the OCMI will limit the endorsement by indicating the ship or type of service.

* * * * *

(k) *Competence in the use of Automatic Radar-Plotting Aids (ARPA).* (1) Subject to paragraph (j)(2) of this section, all candidates for masters' or mates' licenses for service on vessels in ocean or near-coastal service, or for licenses for operators of uninspected passenger vessels for service beyond the boundary line, shall each present a certificate of completion from an approved course or approved training on an ARPA simulator. The course must be sufficient to establish that the applicant is competent to maintain safe navigation through the proper use of ARPA, by correctly interpreting and analyzing the information obtained from that device and taking into account both the limitations of the equipment and the prevailing circumstances and conditions. The simulator used in the course must meet or exceed the performance standards established under STCW Regulation I/12 of the 1995 Amendments.

(2) Training and assessment in the use of ARPA is not required for those who serve exclusively on ships not fitted with ARPA. However, when the simulator training has not been completed, the license must be endorsed to indicate this limitation.

(l) *Certificate for operator of radio in the Global Maritime Distress and Safety System (GMDSS).* (1) Subject to paragraph (l)(2) of this section, candidates for all masters' or mates' licenses for service on vessels in ocean or near-coastal service shall each present either a certificate for operator of radio in the GMDSS issued by the Federal Communication Commission (FCC) or a certificate of completion from a Coast-Guard- or an FCC-approved course for operator of radio in the GMDSS. The course must be sufficient to establish that the applicant is competent to perform radio duties on a ship participating in the GMDSS and meets the standard of competence under STCW Regulation IV/2 of STCW.

(2) Candidates intending to serve only on ships not required to comply with the provisions of the GMDSS in Chapter IV of SOLAS need not comply with those of paragraph (k)(1) of this section.

(m) *Personal survival techniques.* (1) Applicants for licenses in the following categories shall each present a certificate of completion from an approved course or approved training in personal survival techniques. The course must be sufficient to establish that the applicant meets the standard of competence under STCW Regulation VI/1 and table A–VI/1–1 of the STCW Code. The course must have been completed 5 years or less before the date of application for the license requested:

(i) All masters' or mates' licenses for service on vessels in ocean or near-coastal service.

(ii) All licenses for operators of uninspected passenger vessels for service beyond the boundary line.

(iii) All licenses for service on mobile offshore frilling units.

(iv) All engineers' licenses.

(2) The officer in charge, Marine Inspection (OCMI), may accept a certificate of completion from an approved course or approved training in firefighting designed for a particular ship or type of service; however, in that case the OCMI will limit the endorsement by indicating the ship or type of service.

(n) *Personal safety and social responsibilities.* (1) Applicants for licenses in the following categories shall each present a certificate of completion from an approved course or approved training in personal safety and social responsibilities. The course must be sufficient to establish that the applicant meets the standard of competence under STCW Regulation VI/1 and table A–VI/1–4 of the STCW Code. The course must have been completed 5 years or less before the date of application for the license requested:

(i) All masters' or mates' licenses for service on vessels in ocean or near-coastal service.

(ii) All licenses for operators of uninspected passenger vessels for service beyond the boundary line.

(iii) All licenses for service on mobile offshore drilling units.

(iv) All engineers' licenses.

(2) The officer in charge, Marine Inspection (OCMI), may accept a certificate of completion from an approved course or approved training in firefighting designed for a particular ship or type of service; however, in that case, the OCMI will limit the endorsement by indicating the ship or type of service.

(o) *Procedures for bridge team-work.* Candidates for all masters' or mates' licenses for service on vessels in ocean or near-coastal service shall each present sufficient documentary proof that they understand and can effectively apply procedures for bridge team-work as an essential aspect of maintaining a safe navigational watch, taking into account the principles of bridge-resource management enumerated in section B–VIII/2 of the STCW Code.

(p) *Practical demonstration of skills.* Candidates for original licenses must each successfully complete any practical demonstrations required under this part and appropriate to the particular licenses concerned, to prove that they are sufficiently proficient in skills required under subpart I of this part. The OCMI must be satisfied as to the authenticity and acceptability of all evidence that each candidate has successfully completed those demonstrations in the presence of a designated examiner. The OCMI will place in each candidate's file a written record of the skills required, the results

of the practical demonstrations, and the identification of the designated examiner in whose presence those occurred.

9. In § 10.207, the section heading, the heading for paragraph (c), and paragraph (c)(1) are revised to read as follows:

§ 10.207 Requirements for raise in grade of license.

* * * * *

(c) *Age, experience, training, and assessment.* (1) Applicants for a raise of grade of licenses shall establish that they possess the age, experience, and training qualifications necessary, and that they have been examined and otherwise assessed as may be required by this part to establish competence to hold the particular license requested, before they are entitled to a raise in grade of license.

* * * * *

10. In § 10.209, paragraphs (k), (l), and (m) are added to read as follows:

§ 10.209 Requirements for renewal of licenses and certificates of registry.

* * * * *

(k) After July 31, 1998, each applicant for renewal of a license in any of the following categories shall meet the applicable requirements of §§ 10.205(g), 10.205(l), and 10.205(m) unless he or she has previously done so:

(1) All masters' or mates' licenses for service on vessels in ocean or near-coastal service.

(2) All licenses for operators of uninspected passenger vessels for service beyond the boundary line.

(3) All licenses for service on mobile offshore drilling units.

(4) All engineers' licenses.

(l) After July 31, 1998, each applicants for renewal of a license in any of the following categories of license shall provide evidence of having both demonstrated competence in firefighting, personal survival techniques, and personal safety and social responsibility and been examined or continuously assessed in these areas as part of an approved training program, within the previous 5 years:

(1) All masters' or mates' licenses for service on vessels in ocean or near-coastal service.

(2) All licenses for operators of uninspected passenger vessels for service beyond the boundary line.

(3) All licenses for service on mobile offshore drilling units.

(4) All engineers' licenses.

(m) After July 31, 1998, each applicant for renewal of any master's or mate's license for service on vessels in ocean or near-coastal service, or any license for operator of an uninspected passenger vessel for service beyond the boundary line, shall meet the applicable requirements of §§ 10.205(k), 10.205(l), and 10.205(o) if he or she has not previously done so.

11. In § 10.304, the heading is revised and paragraphs (e), (f), and (g) are added to read as follows:

§ 10.304 Substitution of training for required service, and use of training- and assessment-record books.

* * * * *

(e) Where a candidate for ocean and near-coastal deck licenses uses completion of approved training to substitute for required service, then not less than 1 year of the remaining service must be part of approved training that meets the appropriate requirements of Chapter II of STCW and the requirements of subpart C of this part. The candidate's training must be documented in a Coast-Guard-accepted training- and assessment-record book.

(f) Each candidate for an engineer's licenses for service on seagoing vessels shall complete onboard training as part of approved training that meets the appropriate requirements of Chapter III of STCW and the requirements of subpart C of this part. The training must be documented in a Coast-Guard-accepted training- and assessment-record book.

(g) The training- and assessment-record book referred to in paragraphs (e) and (f) of this section must contain at least the following:

(1) Identification of the candidate, including full name, home address, photograph or photo-image, and personal signature.

(2) The objectives of the training and assessment.

(3) The tasks to be performed or the skills to be demonstrated, based on the standards of competence set forth in the tables of the appropriate sections in Part A of the STCW Code.

(4) The criteria to be used in determining that the tasks or skills have been performed properly, based on the standards of competence set forth in the tables of the appropriate sections in Part A of the STCW Code.

(5) A place for a qualified instructor to indicate by his or her initials that the candidate has received training in the proper performance of the task or skill.

(6) A place for a qualified examiner to indicate by his or her initials that the candidate has successfully completed a practical demonstration and has proved competent in the task or skill under the criteria.

(7) Identification of each qualified instructor by full name, home address, employer, job title, ship name or business address, number of any Coast Guard license or document held, and personal signature.

(8) Identification of each designated examiner by full name, home address, employer, job title, ship name or business address, number of any Coast Guard license or document held, and personal signature confirming that his or her initials certify that he or she has witnessed the practical demonstration of a particular task or skill by the candidate.

12. Section 10.309 is added to read as follows:

§ 10.309 Approved training other than approved courses.

(a) When the training and assessment of competence required by these regulations are not subject to § 10.302 of this part and are not being used to substitute for seagoing service, they must meet the following requirements:

(1) The training and assessment program must have written, clearly defined objectives that emphasize specific knowledge, skills, and abilities, and include criteria to use in establishing a candidate's successful achievement of the objectives.

(2) The training must be set out in a written syllabus that conforms to a Coast-Guard-accepted outline for such training and includes—

(i) The sequence of subjects to be covered;

(ii) The number of classroom hours in the presence of a qualified instructor to be spent on each subject;

(iii) The identity and professional qualifications of the instructor(s) to be conducting the training;

(iv) The identification of other media or facilities to be used in conducting training; and

(v) Measurements at appropriate intervals of each candidate's progress toward acquisition of the specific knowledge, skills, and abilities stated in the objectives.

(3) Except as provided in paragraphs (a)(4) and (a)(5) of this section, documentary evidence must be readily available to establish that all instructors—

(i) Have experience, training, or instruction in effective instructional techniques;

(ii) Are qualified in the task for which the training is being conducted; and

(iii) Hold the level of license, endorsement, or other professional credential required of those who would apply, on board a vessel, the relevant level of knowledge, abilities, and skills described in the training objectives.

(4) Neither a specialist in a particular field of non-maritime education, such as

mathematics or first aid, nor an individual with at least 3 years of service as a member of the Armed Forces of the United States specializing in the field in which he or she is to conduct training, need hold a maritime license or document to conduct training in that field.

(5) A simulator may be used in training if—

(i) The simulator meets applicable performance standards;

(ii) The instructor has gained practical operational experience on the particular type of simulator being used; and

(iii) The instructor employing the simulator has received appropriate guidance in instructional techniques involving the use of simulators.

(6) Essential equipment and instructional materials must afford all candidates adequate opportunity to participate in exercises and acquire practice in performing required skills.

(7) A process or routinely assessing the effectiveness of the instructors, including the use of confidential evaluations by candidates, must be in place.

(8) Records of candidates' performance must be maintained for at least a year.

(9) To ensure that the training is meeting its objectives and the requirements of paragraph (a) of this section, its offeror must monitor it at suitable intervals in accordance with a Coast-Guard-accepted quality-standards system, which must include the following features:

(i) Those monitoring the trading, shall be persons knowledgeable about the subjects being monitored and about the national and international requirements that apply to the training, and they shall not themselves be involved in the training.

(ii) Those monitoring the training must enjoy convenient access to all appropriate documents and facilities, and opportunities both to observe all appropriate activities and to conduct confidential interviews when necessary.

(iii) Arrangements must be such as to ensure that persons monitoring the training are not penalized or rewarded, directly or indirectly, by the sponsor of the training for making any particular observations or for reaching any particular conclusions.

(10) Those monitoring the training shall communicate their conclusions to the Coast Guard within 1 month of the completion of the monitoring.

(11) Upon prior notice by the Coast Guard, those providing the training shall let the Coast Guard observe the training and review documentation relating to paragraphs (a)(1) through (a)(10) of this section.

(b) The Coast Guard will maintain a list of training each of whose providers annually submits a certificate, signed by the provider or its authorized representative, starting that the training fully complies with requirements of this section. Training on this list will presumptively offer the training necessary for licenses and STCW endorsements under this part. The Coast Guard will update this list periodically and make it available to members of the public on request.

(c) If the Coast Guard determines, on the basis of observations or conclusions either of its own or by those monitoring the training, that particular training does not satisfy one or more of the conditions described in paragraph (a) of this section—

(1) The Coast Guard will so notify the provider of the training by letter enclosing a report of the observations and conclusions;

(2) The provider will have a specified period to appeal the conclusions to the appropriate official at Coast Guard Headquarters, or to bring the training into compliance; and

(3) If the appeal is denied—or the deficiency is not corrected in the allotted time, or within any additional period held by the Coast Guard, considering progress toward compliance, to be appropriate—the Coast Guard will remove the training from the list referred to in paragraph (b) of this section until it can verify full compliance; and it may deny applications based in whole or in part on training not on the list until additional training or assessment can be documented.

13. In § 10.480, paragraph (d)(1) is added and paragraph (d)(20 is added and reserved to read as follows:

§ 10.480 Radar observer.

* * * * *

(d) * * *

(1) Each applicant for an STCW certificate or endorsement as master or deck officer must complete approved radar-simulator training that meets the appropriate requirements of sections A–I/12 and A–II of the STCW Code.

* * * * *

14. Section 10.601 is revised to read as follows:

§ 10.601 Applicability.

This subpart provides for the licensing of radio officers for employment on vessels, and for the certification of radio operators for service on ships subject to the provisions on the Global Maritime Distress and Safety System (GMDSS) of Chapter IV of SOLAS.

15. In § 10.603, the heading is revised, and paragraphs (d) and (e) are added to read as follows:

§ 10.602 Requirements for radio offices' licenses and radio operators' certificates.

* * * * *

(d) Each applicant for a radio operator's certificate required for service on ships subject to the Global Maritime Distress and Safety System (GMDSS) shall provide evidence that he or she meets the standard of competence set out in STCW Regulation IV/2 including the competence to transmit and receive information using subsystems of GMDSS, to fulfill the functional requirements of GMDSS, and to provide radio services in emergencies.

(e) Evidence required by paragraph (d) of this section must include a certificate of completion of a Coast Guard-approved or FCC-approved course on the GMDSS.

16. In § 10.901, paragraphs (c) and (d) are added to read as follows:

§ 10.901 General provisions.

* * * * *

(c) Each applicant for a license for service in the following capacities on vessels that operate beyond the boundary line must also provide sufficient documentary evidence that he or she has successfully performed practical demonstrations using one or more of the methods for demonstrating competence authorized under the tables set out under the appropriate regulations of STCW:

(1) *Deck Department*—(i) Officer in charge of the navigational watch on seagoing ships of 500 gross tons or more.

(ii) Officer in charge of the navigational watch on seagoing ships of less than 500 gross tons not engaged on near-coastal voyages.

(iii) Officer in charge of the navigational watch on seagoing ships of less than 500 gross tons engaged on near-coastal voyages.

(iv) Master and chief mate on seagoing ships of 3,000 gross tons or more.

(v) Master and chief mate on seagoing ships of between 500 and 3,000 gross tons or more.

(vi) Master on seagoing ships of less than 500 gross tons not engaged on near-coastal voyages.

(vii) Master on seagoing ships of less than 500 gross tons engaged on near-coastal voyages.

(2) *Engine Department*—(i) Officer in charge of the an engineering watch in a manned engine-room on a seagoing ship.

(ii) Designated duty engineer in a periodically unmanned engine-room on a seagoing ship.

(iii) Chief engineer officer of a seagoing ship driven by main propulsion machinery of 3,000 kW [4,000 hp] of propulsion power or more.

(iv) Second engineer officer of a seagoing ship driven by main propulsion machinery of 3,000 kW [4,000 hp] of propulsion power or more.

(v) Chief engineer officer of a seagoing ship powered by main propulsion machinery of between 750 kW [1,000 hp] and 3,000 kW [4,000 hp] of propulsion power or more.

(vi) Second engineer officer of a seagoing ship driven by main propulsion machinery of between 750 kW [1,000 hp] and 3,000 kW [4,000 hp] of propulsion power or more.

(d) Simulators used in assessment of competence under paragraph (c) of this section must meet the appropriate performance standards set out in section A–I/12 of the STCW Code. However, simulators installed or brought into use before February 1, 2002, need not meet them so far as they fulfill the objectives of the assessment of competence or demonstration of proficiency.

17. In § 10.910, the introductory text and table 10.910–2 are revised to read as follows:

§ 10.910 Subjects for deck licenses.

On each topic indicated by an ''X'', each applicant for an ocean or near-coastal license is subject to an assessment of his or her command of the practical skills included within each professional topic, as well as to a written test of his or her knowledge. On each topic indicated by a ''T'' he or she is subject only to an assessment of evidence obtained from his or her completion of approved training. On each topic indicated by an ''A'' he or she is subject only to an assessment of his or her command of those practical skills.

* * * * *

BILLING CODE 4910–14–M

TABLE 10.910-2 - LICENSE CODES

Examination topics	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27
Navigation and position determination:																											
Ocean Track Plotting:																											
Middle-Latitude Sailing	1	1		1	1																						
Mercator Sailing	X	X		1	1																						
Great-Circle Sailing	1	1		1																							
Parallel Sailing	1	1		1	1																						
ETA	X	X	1	X	X																						
Piloting:																											
Distance Off		X	X	X	X	X	X	X	X	X	X		X	X	X	X	X					X	X	X			
Bearing Problems		X	X	X	X	X	X	X	X	X	X		X	X	X	X	X					X	X	X			
Fix or Running Fix		X	X	X	X	X	X	X	X	X	X		X	X	X	X	X					X	X	X			
Chart Navigation		X	X	X	X	X	X	X	X	X	X	2	X	X	X	X	X	2	2	2	2	X	X	X			
Dead Reckoning		X	X	X	X	X	X	X	X	X	X		X	X	X	X	X					X	X	X			
Celestial Observations:																											
Special Cases (h/lo Alt., Backsight)	1																										
Latitude by Polaris	1	1	1	1																							
Latitude by Meridian Transit	1																										
Lat. by Meridian Transit (Sun Only)	X	X	1	X	X	1	1			1												1	1				
Fix or Running fix (Any body)	X	X	1	X																		1					
Fix or Running Fix (Sun Only)					X	1	1			1												1	1				
Star Identification	1	1	1	1																							
Star Selection	1	X	1	X																		1	1				
Times of Celestial Phenomena:																											
Time of Meridian Transit	1																										
Time of Meridian Transit (Sun Only)		X	1	X	X	1	1		1													1	1				
Second Estimate Meridian Transit	1																										
Zone Time Sun Rise/Set/Twilight	X	X	1	1	1	1	1			1												1	1				
Zone Time Moon Rise/Set	X	X		1																							
Speed by RPM	X	X		X									3														
Fuel Conservation	X	X											3														
Electronic Navigation	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X					X	X	X			
Instruments and Accessories	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X			
Aids to Navigation	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X			
Charts, Navigation Pubs. & Notices to Mariners	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X			
Naut. Astronomy and Nav. Definitions	X	X		X	X																						
Chart Sketch																								4			
Seamanship:																											
Marlinelike Seamanship			X	X	X	X	X	X	X	X	X	X		X		X	X	X	X	X	X	X	X	X			
Purchases, Blocks and Tackle			X	X	X		X			X	X	X		X		X	X	X	X	X	X	X	X	X			
Small-Boat Handling Under Oars or Sail				X	X								X	X													
Watchkeeping:																											
COLREGS	X	X	X	X	X	X	X	X	5	X	5		5	5	5	5	5					X	X	5			
Inland navigational Rules	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X			
Basic Principles, Watchkeeping	X	X	X	X	X	X	X			X	X	X	X	X	X	X	X	X	X	X	X						
Navigation Safety Regs. (33 CFR 164)	X	X		X	X								X	X				X				6	6	6			

TABLE 10.910-2 - LICENSE CODES - Continued

Examination Topics	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27
Compass-Magnetic and Gyro:																											
Principles of Gyro Compass	X	X	X	X	X	X							X	X	X	X						X	X				
Principles of Magnetic Compass	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X			
Magnetic-Compass Adjustment	X	X											X	X													
Gyro-Compass Error/Correction	X	X	X	X	X	X	7			X			X	X	X	X	7					X	X	X			
Magnetic-Compass Error/Correction	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X					X	X	X			
Determination of Compass Error:																											
Azimuth (Any Body)	X	X		1																							
Azimuth (Sun Only)			1		X	1	1			1												1	1				
Amplitude (Any Body)	X																										
Amplitude (Sun Body)		X	1	X	X	1	1			1												1	1				
Deviation Table construction	X	X	1	X	X		X			X			3		X		X					X					
Terrestrial Observation		X	X	X	X	X	X	X	X	X	X		X	X	X	X	X					X	X	X			
Gyro-Controlled Systems	X	X	X	X		X																					
Operation & Care of Main Gyro Systems	X	X	X	X		X																					
Meteorology and Oceanography:																											
Characteristics of Weather Systems	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X			
Ocean-Current Systems		X	X	X	X																	X	X				
Weather Charts and Reports		X	X	X	X		X			X												X					
Tides and Tidal Currents:																											
Extensive Tidal Effects	X	X	X																								
Terms and Definitions		X	X	X	X	X	X	X	X	X	X		X	X	X	X	X					X	X	X			
Publications		X	X	X	X	X	X	X	X	X	X		X	X	X	X	X					X	X	X			
Calculations		X	X	X	X	X	X	X	X	X			X	X	X	X	X					X	X	X			
Ship Maneuvering and Handling:																											
Approaching Pilot Vessel or Station	X	X	X			X																		X			
Shiphandling in Rivers, Estuaries	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X			
Maneuvering in Shallow Water	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X			
Interaction with Bank/Passing Ship	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X			
Berthing and Unberthing	X	X	X			X	X	X	X	X			X	X	X		X	X	X		X	X		X			
Anchoring and Mooring	X	X	X	X	X	X	X	X	X			X	X	X	X	X					X	X	X				
Dragging Cleaning Fouled Anchors	X	X	X	X	X	X	X						X	X	X	X	X					X					
Drydocking with & without Prior Damage		X	X																								
Heavy-Weather Operations	X	X	X				X	X	X				X		X		X					X					
Maneuvering for Launching of Life boats and Liferafts in Heavy Weather	X	X	X				X			X			X		X							X	X				
Receiving Survivors From Lfbts/Lfrts		X	X				X			X	X																
General Turn Circle, Pivot Point, Advance and Transfer	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X			
Determine Maneuvering Characteristics of Major Vessel Types	X	X		X	X																						
Wake Reduction		X	X				X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X			
Ice Operations/Ice Navigation	X	X	X			X				X	X	X	X	3	X	3											
Towing Operations		X	X	X	X	X	X			X	X	X		X		X	X	X	X	X	X						

TABLE 10.910-2 - LICENSE CODES - Continued

Examination topics	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27
Ship Stability, Const, & Damage Control:																											
Principles of Ship Construction		X	X	X	X		7						X	3	X	3	7	X	X								
Vessel Structural Mem. IMO Ship Stability Recommendations	X	X																									
Trim and Stability	X	X	X	X	X	X	X			X	X	X	X	3	X	3	X	X	X		X	X	X				
Use of Stability Letter			X				X								X		X	X	X	X	X						
Stability, Trim, and Stress Calculation	X	X	X	X			7						3									X	X				
Damage Trim and Stability	X	X	X			X	7						X		X		X					X	X				
Damage Control	X	X	X			X	7						X		X		7										
Ship Power Plants:																											
Marine Power Plants Operations & Principles		X	X				7						X		X		7	X	X								
Ships' Auxiliary Machinery		X	X										X		X			X	X								
Marine Engineering Terms		X	X				7						X		X		7	X	X								
Small-Engine Operations and Maintenance							X	X	X								X			X							
Cargo handling and Stowage:																											
Cargo Stowage and Security, including Cargo Gear		X	X	X	X	X	X						X	X	X	X	7	X	X	X							
Loading and Discharging Operations		X	X	X	X	X							X	X	X	X		X	X	X							
Dangerous/Hazardous Cargo Regulations	X	X	X	X	X	X							X	X	X	X		X	X	X							
Tank Vessel Safety		X	X	X	X	X							X	X	X	X											
Cargo Piping and Pumping Systems				X	X	X								X		X											
Cargo Oil Terms and Definitions				X	X	X								X		X											
Ballasting, Tank Clean., & Gas free Ops.		X	X	X	X	X						X	X	X	X		X	X	X								
Load-on-Top Procedures Barge Regs. (Operations)							X			X	X	X					X	X	X	X	X						
Fire Prevention and Firefighting Appliances:																											
Organization of Fire Drills		X	X	T	T	T	T			X	X	X	X	X	X	X	X	X	X	X	X	X	T				
Classes and Chemistry of Fire		X	X	T	T	T	T	T	X	X	X	X	X	X	X	X	X	X	X	X	X	X	T				
Firefighting Systems		X	X	T	T	T	T			X	X	X	X	X	X	X	X	X	X	X	X	X	T				
Firefighting Equip.		X	X	T	T	T	T	T	X	X	X	X	X	X	X	X	X	X	X	X	X	X	T				
Basic Firefighting and Prevention		X	X	T	T	T	T	T	X	X	X	X	X	X	X	X	X	X	X	X	X	X	T				
Emergency Procedures:																											
Ship Beaching Precautions	X	X	X										X		X												
Actions Prior to/After Grounding	X	X	X										X		X			X	X								
Refloating a Grounded Ship	X	X	X										X		X			X	X								
Collision	X	X	X				X	X		X	X	X	X		X		X	X	X		X						
Temporary Repairs		X	X	X			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X				
Passenger/Crew Safety in Emergency		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X				
Fire or Explosion		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X				
Abandon Ship		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X				
Emergency Steering		X	X	X									X		X			X	X			X	X				
Rescuing Surv. From Ship/Airc. in Dist.		X	X	X	X	X	X			X			X	X	X	X	X	X	X								
Man Overboard		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X				
Emergency Towing		X	X				X			X			X														

TABLE 10.910-2 - LICENSE CODES - Continued

Examination topics	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27
Medical Care:																											
Int'l. Medical Guide for Ships		X	X																								
Ship Med. Chest and Med. Aid at Sea		X	X																								
Medical Sec., Inter. Code of Signals		X	X	X	X																						
1st Aid Guide: Accidents with Dangerous Goods		X	X																								
First Aid		X	X	T	T	T	T	T	X	X	X	X	X	X	X	X	X	X	X	X	X	X	T				
Maritime Law:																											
International Maritime Law: Int'l. Convention on Load Lines	A	A	A																								
SOLAS	A	A	A				7																				
MARPOL 73/78	A	A	A	X	X																						
International Health Regulations	A	A	A																								
Other Int'l Instruments for Ships/Pass/Crew/Cargo Safety	A	A	A																								
National Maritime Law:																											
Load Lines	X	X	X			X	X			X	X		3	3	3	3	7										
Cert. and Documentation of Vessels	X	X	X				X	X	X	X	X	X	X		X		X	X	X		X	X					
Rules & Regs. for Inspected Vessels	X	X	X	X	X	X	7						X	X	X	X	7	X	X	X	7						
Rules & Regs. for T-Boats							X										X				X						
Rules and Regs for Uninsp. Fish. Vsls																						X	X				
Rules and Regs for Uninsp. Vessels							X	X	X	X	X	X					X				X						
Pollution Prevention Regulations	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X			
Pilotage	X	X	X																					X			
Licensing & Certification of Seamen	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X				
Shipment and Discharge, Manning	X		X				X			X			X		X												
Title 46 U.S. Code	X	X	X										X		X			X	X								
Captain of the Port Vessel Traffic Service for the Route Desired																								X			
Shipboard Management and Training:																											
Personnel Management	X	X	X										X		X			X	X								
Shipboard Organization	X	X	X										X		X			X	X								
Required Crew Training	X	X	X										X		X			X	X								
Ship sanitation	X	X	X				X	X	X	X	X	X	X		X		X	X	X		X	X					
Vessel Alteration/Repair- Hot Work	X	X	X				X						X		X			X	X								
Safety	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X				
Ship's Business:																											
Charters	X	X	X																								
Liens, Salvage	X	X	X																								
Insurance	X	X	X																								
Entry, Clearance	X	X	X																								
Certificates and Documents Required	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X				

TABLE 10.910-2 - LICENSE CODES - Continued

Examination topics	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27
Communications:																											
Flashing Light	X	X		T	T																						
Radiotelephony		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X			
Radiotelegraphy Emerge. Dist. Signals		X		X	X																						
Signals: Wreck/Special		X	X	X	X	X	X	X	X	X	X		X	X	X	X	X					X	X				
International Code of Signals		X	X	X	X																						
Lifesaving:																											
Survival at Sea		X	X	T	T	T	T			X												X	T				
Lifesaving appliance		X	X	T	T	T	T	T		X	X	X		X	X	X	7	X	X	X	7	X	T				
Search and Rescue:																											
Search and Rescue Procedures	X	X	X																								
AMVER	X	X	X																								
Operation of Sail/Aux																											
Any other subject considered necessary to establish the applicant's proficiency	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X			

1 - For ocean routes only.

2 - River chart navigation only.

3 - Topic covered only on Great Lakes specific module(s) taken for "Great Lakes and inland" routes.

4 - Including recommended courses, distances, prominent aids to navigation, depths of waters in channels and over hazardous shoals, other important features of the routes, such as character of the bottom. The OMCI may accept chart sketching of only a portion or portions of the route for long or extended routes.

5 - Take COLREGS if license not limited to non-COLREG waters.

6 - For licenses over 1600 gross tons.

7 - For licenses over 100 gross tons.

8 - Applicants for a sail/auxiliary sail endorsement to a master's or mate's license are tested on a sail vessel safety, rules of the road, operations, heavy-weather operations, navigation, Maneuvering, and terminology.

BILLING CODE 4910–14–C

18. Section 10.950 is revised to read as follows:

§ 10.950 Subjects for engineer licenses.

(a) On each topic indicated by an ''X'', each applicant for an engineering license is subject to a written test of his or her knowledge. On each topic indicated by a ''T'', he or she is subject only to an assessment of evidence obtained from his or her completion of approved training. On each topic indicated by an ''A'' he or she is subject only to an assessment of his or her practical skills assessed by an established regime of on-board practical factors, simulator demonstration, or a combination.

(b) A distinct engineering license for steam-driven vessels of limited power or tonnage is no longer practicable, because of the small number of these vessels. When such a license is necessary for these vessels, the owner or operator is responsible for the engineer's competence in the operation of steam propulsion. Engineer licenses endorsed for steam must first hold a comparable license for motor-driven vessels and attend a course approved for limited steam engines.

BILLING CODE 4910–14–M

TABLE 10.950 SUBJECTS FOR ENGINEER LICENSES

	UNLIMITED POWER/TONNAGE								LIMITED POWER/TONNAGE							
											UNIN. IND.	FISH VSL.	DESIGNATED DUTY ENG.		MODU	
	CH/ENG STM	CH/ENG MTR	1/A ENG STM	1/A ENG MTR	2/A ENG STM	2/A ENG MTR	3/A ENG STM	3/A ENG MTR	CH ENG	ASST ENG	CH ENG	ASST ENG	UNLTD	LTD	CH ENG	ASST ENG
General Subjects:																
Engineering Theory	X/T	X/T	X/T	X/T	A	A	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T
Thermodynamics	X/T	X/T	X/T	X/T	A	A	X/T	X/T								
Prints & Tables	X/T	X/T	X/T	X/T	A	A	T	T	T	T	T	T	T	T	T	T
Machine Shop	T	T	T	T	A	A	T	T	T	T	T	T	T	T	T	T
Pipes, Fittings, Valves	T/A	T/A	T/A	T/A	A	A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A
Bilge Systems	T/A	T/A	T/A	T/A	A	A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A
Sanitary/Sewage Systems	T/A	T/A	T/A	T/A	A	A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A
Freshwater Systems	T/A	T/A	T/A	T/A	A	A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A
Distilling Systems	T/A	T/A	T/A	T/A	A	A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A
Cooling Systems	T/A	T/A	T/A	T/A	A	A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A
Lubricants	X/T	X/T	X/T	X/T	A	A	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T
Lubrication Systems	T/A	T/A	T/A	T/A	A	A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A
Bearings	T/A	T/A	T/A	T/A	A	A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A
Pumps	T/A	T/A	T/A	T/A	A	A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A
Compressors	T/A	T/A	T/A	T/A	A	A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A
Hydraulics	X/T	X/T	X/T	X/T	A	A	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T
Steering Systems	T/A	T/A	T/A	T/A	A	A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A
Deck Machinery	T/A	T/A	T/A	T/A	A	A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A
Automation Systems	T/A	T/A	T/A	T/A	A	A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A
Control Systems	T/A	T/A	T/A	T/A	A	A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A
Instrumentation	T/A	T/A	T/A	T/A	A	A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A
Ship Construction & Repairs	X/T	X/T	X/T	X/T	A	A	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T
Propellers & Shafting Systems	T/A	T/A	T/A	T/A	A	A	T/A	T/A	T/A	T/A	T/A	T/A	T/A	T/A		
Administration	T/A	T/A	T/A	T/A					T/A		T/A		T/A	T/A	T/A	
Watch-Standing Duties					A	A	T/A	T/A		T/A		T/A				T/A
Refrigeration, Air Conditioning, Heating & Ventilation:																
Theory	X/T	X/T	X/T	X/T	A	A	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T		X/T
Air-Conditioning Systems	X/T	X/T	X/T	X/T	A	A	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T		X/T
Refrigeration Systems	X/T	X/T	X/T	X/T	A	A	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T		X/T
Heating Systems	X/T	X/T	X/T	X/T	A	A	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T		X/T
Ventilation Systems	X/T	X/T	X/T	X/T	A	A	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T		X/T
System Controls	X/T	X/T	X/T	X/T	A	A	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T		X/T
Trouble-Shooting	X/T	X/T	X/T	X/T	A	A	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T		X/T
Safety	X/T	X/T	X/T	X/T	A	A	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T		X/T

TABLE 10.950 SUBJECTS FOR ENGINEER LICENSES

	UNLIMITED POWER/TONNAGE								LIMITED POWER/TONNAGE							
											UNIN. IND.	FISH VSL.	DESIGNATED DUTY ENG.		MODU	
	CH/ENG		1/A ENG		2/A ENG		3/A ENG		CH	ASST	CH	ASST			CH	ASST
	STM	MTR	STM	MTR	STM	MTR	STM	MTR	ENG	ENG	ENG	ENG	UNLTD	LTD	ENG	ENG
Electricity:																
Theory	X/T	X/T	X/T	X/T	A	A	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T
Batteries	X/T	X/T	X/T	X/T	A	A	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T
Generators/Alternators	X/T	X/T	X/T	X/T	A	A	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T
Motors-AC/DC	X/T	X/T	X/T	X/T	A	A	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T
General Maintenance	X/T	X/T	X/T	X/T	A	A	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T
Motor Controllers	X/T	X/T	X/T	X/T	A	A	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T
Distribution Systems	X/T	X/T	X/T	X/T	A	A	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T
Propulsion Systems	X/T	X/T	X/T	X/T	A	A	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T
Communication Systems	X/T	X/T	X/T	X/T	A	A	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T
Electronic Systems	X/T	X/T	X/T	X/T	A	A	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T
Safety	X/T	X/T	X/T	X/T	A	A	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T
Trouble-Shooting	X/T	X/T	X/T	X/T	A	A	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T
Steam Generation:																
Theory	X/T		X/T		A		X/T		T*	T*			T*	T*		
Main Boilers	X/T		X/T		A		X/T		T*	T*			T*	T*		
Feedwater Systems	X/T		X/T		A		X/T		T*	T*			T*	T*		
Condensate Systems	X/T		X/T		A		X/T		T*	T*			T*	T*		
Control Systems	X/T		X/T		A		X/T		T*	T*			T*	T*		
Automation Systems	X/T		X/T		A		X/T		T*	T*			T*	T*		
Fuel Oil	X/T		X/T		A		X/T		T*	T*			T*	T*		
Fuel Oil Systems	X/T		X/T		A		X/T		T*	T*			T*	T*		
Boiler Water	X/T		X/T		A		X/T		T*	T*			T*	T*		
Safety	X/T		X/T		A		X/T		T*	T*			T*	T*		
Trouble-Shooting	X/T		X/T		A		X/T		T*	T*			T*	T*		
Steam Engines:																
Propulsion Turbines	X/T		X/T		A		X/T		T*	T*			T*	T*		
Auxiliary Turbines	X/T		X/T		A		X/T		T*	T*			T*	T*		
Governors	X/T		X/T		A		X/T		T*	T*			T*	T*		
Control Systems	X/T		X/T		A		X/T		T*	T*			T*	T*		
Automation Systems	X/T		X/T		A		X/T		T*	T*			T*	T*		
Bearings & Lubrication Systems	X/T		X/T		A		X/T		T*	T*			T*	T*		
Auxiliary Diesels	X/T		X/T		A		X/T		T*	T*			T*	T*		
Safety	X/T		X/T		A		X/T		T*	T*			T*	T*		
Trouble-Shooting	X/T		X/T		A		X/T		T*	T*						

TABLE 10.950 SUBJECTS FOR ENGINEER LICENSES

	UNLIMITED POWER/TONNAGE				LIMITED POWER/TONNAGE							
					UNIN. IND.	FISH VSL.	DESIGNATED DUTY ENG.				MODU	
	CH/ENG STM MTR	1/A ENG STM MTR	2/A ENG STM MTR	3/A ENG STM MTR	CH ENG	ASST ENG	CH ENG	ASST ENG	UNLTD	LTD	CH ENG	ASST ENG
Motor:												
Propulsion Engines	X/T	X/T	A	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T
Auxiliary Engines	X/T	X/T	A	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T
Starting Systems												
Bearings	X/T	X/T	A	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T
Lubrication Systems	X/T	X/T	A	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T
Cooling Systems	X/T	X/T	A	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T
Fuel	X/T	X/T	A	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T
Fuel Systems	X/T	X/T	A	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T
Combustion	X/T	X/T	A	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T
Intake Systems	X/T	X/T	A	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T
Exhaust Systems	X/T	X/T	A	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T
Scavenging & Super-charging Systems	X/T	X/T	A	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T
Automation Systems	X/T	X/T	A	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T
Control Systems	X/T	X/T	A	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T
Governors	X/T	X/T	A	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T
Auxiliary Boilers	X/T	X/T	A	X/T								
Safety	X/T	X/T	A	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T
Trouble-Shooting	X/T	X/T	A	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T	X/T
Engineering Safety:												
Fire Theory	T	T	T	T	T	T	T	T	T	T	T	T
Fire Prevention	T	T	T	T	T	T	T	T	T	T	T	T
Fire Fighting	T	T	T	T	T	T	T	T	T	T	T	T
Stability & Trim	T	T	T	T	T	T	T	T	T	T	T	T
Flooding	T	T	T	T	T	T	T	T	T	T	T	T
Dewatering	T	T	T	T	T	T	T	T	T	T	T	T
Damage Control	T	T	T	T	T	T	T	T	T	T	T	T
Emergency Equipment	T	T	T	T	T	T	T	T	T	T	T	T
Life Saving Appliances	T	T	T	T	T	T	T	T	T	T	T	T
General Safety	T	T	T	T	T	T	T	T	T	T	T	T
First Aid	T	T	T	T	T	T	T	T	T	T	T	T
Dangerous Materials	T	T	T	T	T	T	T	T	T	T	T	T
Pollution Prevention	T	T	T	T	T	T	T	T	T	T	T	T
U.S. Rules & Regs.	T	T	T	T	T	T	T	T	T	T	T	T
Internat'l Rules & Regs.	T	T	T	T	T	T	T	T	T	T	T	T

* Note: Engineer licenses endorsed for steam propulsion must first hold a comparable license for motor-driven vessels and attend a course approved for limited power steam plants.

BILLING CODE 4910–14–C

19. Subpart J, consisting of §§ 10.1001 through 10.1005, is added to read as follows:

Subpart J—Ro-Ro Passenger Ships

Sec.
10.1001 Purpose or regulations.
10.1003 Definitions.
10.1005 General requirement for license-holders.

Subpart J—Ro-Ro Passenger Ships

§ 10.1001 Purpose of regulations.

The purpose of the regulations in this subpart is to establish requirements for officers serving on roll-on/roll-off (ro-ro) passenger ships.

§ 10.1003 Definitions.

Roll-on/roll-off (ro-ro) passenger ship means a passenger ship with ro-ro cargo spaces or special-category spaces as defined in the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS), and to which a SOLAS certificate is issued.

§ 10.1005 General requirement for license-holders.

To serve on a ro-ro passenger ship after January 30, 1997, a person licensed as master, chief mate, licensed mate, chief engineer, or licensed engineer shall meet the appropriate requirements of STCW Regulation V/2 and section A–V/2 of the STCW Code, and hold documentary evidence to show his or her meeting these requirements.

PART 12—CERTIFICATION OF SEAMEN

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

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7301, 7302, 7503, 7505, 7701; 49 CFR 1.46.

2. Section 12.01–1 is revised to read as follows:

§ 12.01–1 Purpose of regulations.

(a) The purposes of the regulations in this part are to provide—

(1) A comprehensive and adequate means of determining the identity or the qualifications an applicant must possess to be eligible for certification to serve on merchant vessels of the United States; and

(2) A means of determining that an applicant is competent to serve in a ''rating forming part of a navigational watch'' or a ''rating forming part of an engine-room watch'', or is otherwise ''designated to perform duties in a periodically unmanned engine-room'', on a seagoing ship, in accordance with the provisions of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW), and to receive the certificate or endorsement required by STCW.

(b) The regulations in subpart 12.03 of this part prescribe the requirements applicable to all training and assessment associated with meeting the standards of competence established by STCW.

3. Section 12.01–3 is added to read as follows:

§ 12.01–3 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the Federal Register and the material must be available to the public. All approved material is available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC, and at the U.S. Coast Guard, Operating and Environmental Standards Division, 2100 Second Street SW., Washington, DC, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are as follows:

International Maritime Organization (IMO)

4 Albert Embankment, London, SE1 7SR, England.

Amendments to the Annex to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW), and the associated Seafarers' Training, Certification and Watchkeeping Code (STCW Code), as adopted under resolutions 1 and 2, respectively, by the Conference of Parties to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, held at IMO from June 26 to July 7, 1995—12.01–1; 12.01–6; 12.02–7; 12.02–11; 12.05–3; 12.05–7; 12.10–3; 12.10–9; 12.10–11; 12.15–3; 12.15–7; 12.25–45; 12.30–5.

4. Section 12.01–6 is amended by adding in alphabetical order the following new definitions to read as follows:

§ 12.01–6 Definitions of terms used in this part.

Approved training means training that is approved by the Coast Guard or otherwise meets the requirements of § 12.03–1.

Coast-Guard-accepted means that the Coast Guard has officially acknowledged in writing that the material or process at issue meets the applicable requirements; that the Coast Guard has issued an official policy statement listing or describing the material or process as meeting the applicable requirements; or that an entity acting on behalf of the Coast Guard under a Memorandum of Agreement has determined that the material or process meets the applicable requirements.

Designated examiner means an individual who is trained or instructed in assessment techniques and is otherwise qualified to evaluate whether a candidate for a license, document, or endorsement has achieved the level of competence required to hold the license, document, or endorsement. This individual may be designated by the Coast Guard, or is designated as part of a Coast Guard-approved training or assessment program.

* * * * *

Practical demonstration means the performance of an activity under the direct observation of a designated examiner for the purpose of establishing that the performer is sufficiently proficient in a practical skill to meet a specified standard of competence or other objective criterion.

Qualified Instructor means an individual who has been trained or instructed in instructional techniques and is otherwise qualified to provide required training to candidates for licenses, documents, and endorsements.

* * * * *

Standard of competence means the level of proficiency to be achieved for the proper performance of duties on board vessels in accordance with national and international criteria.

STCW endorsement means a certificate or endorsement issued in accordance with the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW). An STCW endorsement issued by the Officer in Charge, Marine Inspection shall be valid only when accompanied by the appropriate U.S. license or document; and if the license or document is revoked, then the associated STCW endorsement is no longer valid for any purpose.

5. In § 12.02–7, paragraphs (d) and (e) are added to read as follows:

§ 12.02–7 When documents are required.

* * * * *

(d) Every individual serving as a rating forming part of a navigational watch on a seagoing ship of 500 gross tons or more shall hold an STCW

endorsement certifying him or her as qualified to perform the navigational function at the support level, in accordance with STCW.

(e) Every individual who are serving in a rating forming part of a watch in a manned engine-room or designated to perform duties in a periodically unmanned engine-room, on a seagoing ship driven by main propulsion machinery of 750 kW [1,000 hp] of propulsion power or more, shall hold an STCW endorsement certifying him or her as qualified to perform the marine-engineering function at the support level, in accordance with STCW.

6. In § 12.02–11, the heading is revised, and paragraphs (h) and (i) are added, to read as follows:

§ 12.02–11 General provisions respecting merchant mariners' documents.

* * * * *

(h) When a merchant mariner's document is issued, renewed, or endorsed, the Officer in Charge, Marine Inspection (OCMI), will determine whether the holder of the document is required to hold an STCW endorsement for service on a seagoing vessel and, if so, and if the holder is qualified, will issue the appropriate endorsement. The OCMI will also issue an STCW endorsement at other times, if circumstances so require if the holder of and the document is qualified to hold the endorsement. The OCMI will issue an STCW endorsement for the following ratings:

(1) A rating forming part of a navigational watch on a seagoing ship of 500 gross tons or more if the holder of the document is qualified in accordance with STCW Regulation II/4 and section A–II/4 of the STCW Code, to perform the navigational function at the support level.

(2) A rating forming part of a watch in a manned engine-room, if the holder of the document is designated to perform duties in a periodically unmanned engine-room, on a seagoing ship driven by main propulsion machinery of 750 kW [1,000 hp] of propulsion power or more and if the holder is qualified in accordance with STCW Regulation III/4 and section A–III/4 of the STCW Code, to perform the marine-engineering function at the support level.

(i) At the request of the holder of the document, the OCMI may add an endorsement to indicate that the holder has received familiarization or basic safety-training required under, Chapter VI of STCW.

7. In § 12.02–17, paragraph (e) is added to read as follows:

§ 12.02–17 Rules for the preparation and issuance of documents.

* * * * *

(e) An applicant for a merchant mariner's document shall provide a document issued by a qualified medical practitioner attesting the applicant's medical fitness to perform the functions for which the document is issued.

* * * * *

8. Subpart 12.03, consisting of § 12.03–1, is added to read as follows:

Subpart 12.03—Approved Training

Sec.
12.03–1 Approved training other than approved courses.

Subpar 12.03—Approved Training

§ 12.03–1 Approved training other than approved courses.

(a) When training and assessment of competence required by these regulations is not subject to the course-approval provisions of § 10.302 of this chapter, such training and assessment must meet the following requirements:

(1) The program must have written, clearly defined objectives that emphasize specific knowledge, skills, and abilities, and include criteria to be used in establishing a student's successful achievement of the training objectives.

(2) The course of training must be set out in a written syllabus which conforms to a Coast-Guard-accepted outline for such training and includes—

(i) The sequence of subjects to be covered;

(ii) The number of classroom hours (i.e., in the presence of a qualified instructor) to be spent on each subject;

(iii) The identify and professional qualifications of the instructor(s) to be conducting the training;

(iv) Identification of other media or facilities to be used in conducting the training; and

(v) Measurements at appropriate intervals of each student's progress toward acquisition of the specific knowledge, skills and abilities stated in the training objectives.

(3) Documentary evidence must be readily available to establish that all instructors—

(i) Have experience, training, or instruction in effective instructional techniques;

(ii) Are qualified in the task for which the training is being conducted; and

(iii) Hold the level of license, endorsement, or other professional credential required of those who would apply, on board a vessel, the relevant level of knowledge, abilities, and skills described in the training objectives; provided, however—

(A) A specialist in a particular field of non-maritime education, such as mathematics or first-aid, and an individual with at least 3 years of service as a member of the Armed Forces of the United States specializing in the field in which he or she is to conduct training, need not hold a maritime license or document to conduct training in that field; and

(B) A simulator may be used in training if—

(*1*) The instructor employing the simulator has received appropriate guidance in instructional techniques involving the use of simulators;

(*2*) The instructor has gained practical operational experience on the particular type of simulator being used; and

(*3*) The simulator meets applicable performance standards.

(4) Essential equipment and instructional materials must be conveniently available to allow all students adequate opportunity to participate in exercises and acquire practice in performing required skills.

(5) A process of routinely assessing the effectiveness of the instructors, including the use of confidential student evaluations, must be in place.

(6) Records of student performance must be maintained for a period of not less than 1 year.

(7) A process must be in place for monitoring at suitable intervals that the training program is meeting its training objectives and is consistently applying the requirements in accordance with a Coast Guard-accepted quality-standards system, which shall include, as a minimum, the following:

(i) Those monitoring the training program shall be individuals who are knowledgeable about the subject area being monitored and about the national and international requirements which apply to the training program, and they shall not themselves be involved in the activities being monitored.

(ii) Persons engaged to conduct monitoring of training programs must be provided convenient access to all appropriate documents and facilities, as well as opportunities to observe all appropriate activities, and to conduct confidential interviews when necessary.

(iii) Arrangements shall be such as to ensure that persons performing monitoring activities shall not be directly or indirectly penalized or rewarded by the sponsor of the training program being monitored for making any particular observations or for reaching any particular conclusions.

(8) The results of the monitoring must be communicated to the Coast Guard within 1 month of completion of those activities.

(9) Upon prior notification by the Coast Guard, an opportunity must be provided for the Coast Guard to observe training activities and review documentation relating to paragraphs (a)(1) through (a)(10) of this section.

(b) The Coast Guard will maintain a list of training programs which annually submit a certification, signed by the sponsor or an authorized representative of the sponsor, stating that the program is conducted in a manner which fully complies with the requirements in offering a specified course of approved training. Programs on this list will be presumptively considered to offer approved training for the purposes of evaluating materials supporting applications for licenses and STCW endorsements under this part. This list shall be updated periodically and made available to members of the public on request.

(c) If the Coast Guard determines, on the basis of an observation of training activities or a review of relevant documentation, that a particular program does not meet one or more of the conditions described in paragraph (a) of this section—

(1) The Coast Guard will so notify the managers or sponsors of the program by letter enclosing a report of the Coast Guard's observations and its conclusions;

(2) The managers or sponsors of the program will have a specified period to appeal the Coast Guard's conclusions to the appropriate official at Coast Guard Headquarters, or to come into compliance with the requirement where the program has been found to be deficient; and

(3) If the appeal is denied, or the deficiency is not corrected in the allotted time, or within any additional period considered by the Coast Guard to be appropriate considering progress toward compliance, the training program shall be removed from the list referred to in paragraph (b) of this section until full compliance can be established by the Coast Guard, and applications which are based in whole or in part on training received from a program at a time when it was not on the list may be denied until additional training or assessment can be documented.

9. In § 12.05–3, paragraph (d) is revised, paragraph (e) is amended by removing the period at the end and adding a semicolon in its place, and paragraphs (f) and (g) are added to read as follows:

§ 12.05–3 General requirements.

* * * * *

(d) Pass an examination demonstrating ability as an able seaman and lifeboatman with proficiency in survival craft and rescue boats;

* * * * *

(f) Complete approved basic safety-training as set out in STCW Regulation VI/1 and section a–VI/1 of the STCW Code. This training must encompass personal survival, firefighting and fire prevention, elementary first aid, and personal safety and social responsibilities. The Coast Guard may approve a basic safety-training program designed for a particular ship or type of service; however, in that case, the Coast Guard will limit the endorsement by indicating the ship or type of service. The training must have been completed 5 years or less before the date of application for the endorsement. For renewal, the applicant shall prove that his or her competence in all the subjects encompassed by the training has been assessed and established within the last 5 years; and

(g) Meet the requirements of STCW Regulation II/4 and section A–11/4 of the STCW Code, if the applicant will be serving in a rating forming part of a navigational watch on a seagoing ship of 500 gross tons or more.

10. In § 12.05–7, paragraph (a)(5) is added before the note to read as follows:

§ 12.05–7 Service or training requirements.

(a) * * *

(5) For a candidate to qualify to receive an STCW endorsement for service in a ''rating forming part of a navigational watch'' on a seagoing ship of 500 gross tons or more, the candidate's seagoing service must include training and experience associated with navigational watchkeeping and involve the performance of duties carried out under the direct supervision of the master, the officer in charge of the navigational watch, or a qualified rating. The training and experience must be sufficient to establish that the candidate has achieved the required standard of competence prescribed in table A–II/4 of the STCW Code, in accordance with the methods of demonstrating competence and the criteria for evaluating competence specified in that table.

* * * * *

11. In § 12.05–11, the heading and paragraph (a) are revised to read as follows:

§ 12.05–11 General provisions respecting merchant mariner's document endorsed for service as able seaman.

(a) The holder of a merchant mariner's document endorsed for the rating of able seaman may serve in any unlicensed rating in the deck department without obtaining an additional endorsement; provided, however, that the holder shall hold the appropriate STCW endorsement when serving in a ''rating forming part of a navigational watch'' on a seagoing ship of 500 gross tons or more.

* * * * *

12. In § 12.10–3, the heading, paragraph (a) introductory text, and paragraph (a)(6) are revised, and paragraph (c) is added, to read as follows:

§ 12.10–3 General requirements.

(a) To be eligible for certification as lifeboatman with proficiency in survival craft and rescue boats, an applicant shall be at least 18 years of age, shall meet the requirements of STCW Regulation VI/2, paragraph 1, and the appropriate provisions of section A–VI/2 of the STCW Code, and shall meet one of the following requirements:

* * * * *

(6) Successful completion of a training course, approved by the Commandant, that includes a minimum of 30 hours' actual lifeboat training; provided that the applicant produces evidence of having served a minimum of 6 months at sea aboard ocean or coastwise vessels.

* * * * *

(c) To be eligible for certification as lifeboatman with proficiency in survival craft and rescue boats, an applicant shall receive approved basic safety-training as set out in STCW Regulation VI/1 and section A–VI/1 of the STCW Code. This training must encompass personal survival, firefighting and fire prevention, elemental first aid, and personal safety and social responsibilities. The Officer in Charge, Marine Inspection (OCMI), may approve a basic safety-training program designed for a particular ship or type of service; however, in that case, the OCMI will limit the endorsement by indicating the particular ship or type of service. The training must have been completed 5 years or less before the date of application for the endorsement. For renewal, an applicant shall prove that his or her competence has been assessed and established within the last 5 years.

§ 12.10–7 [Reserved].

13. Section 12.10–7 is removed and reserved.

14. Section 12.10–9 is added to read as follows:

§ 12.10–9 Certificates of proficiency in fast rescue boats.

(a) Every person engaged or employed in a rating as a lifeboatman with proficiency in fast rescue boats shall hold a certificate of proficiency in these boats or a merchant mariner's document endorsed for proficiency in them.

(b) To be eligible for a certificate of proficiency in fast rescue boats or a merchant mariner's document endorsed for proficiency in these boats, an applicant must—

(1) Be qualified as a lifeboatman with proficiency in survival craft and rescue boats under this subpart; and

(2) Provide sufficient proof that he or she has met the requirements for training and competence of STCW Regulation VI/2, paragraph 2, and the appropriate requirements of section A–VI/2 of the STCW Code.

15. Section 12.10–11 is added to read as follows:

§ 12.10–11 Requirements for those designated to provide medical care on board ship.

(a) Every person designated to provide medical first aid on board ship, or to take charge of medical care on board ship, shall hold documentary evidence indicating that the holder has attended a course of training in medical first aid or medical care, as appropriate.

(b) The Coast Guard will issue such documentary evidence to the person, or endorse his or her license or document, on being satisfied that the training required under paragraph (a) of this section was sufficient to establish that he or she meets the standards of competence set out in STCW Regulation VI/4 and the provisions of section A–VI/4 of the STCW Code.

16. In § 12.15–3, paragraphs (d) and (e) are added to read as follows:

§ 12.15–3 General requirements.

* * * * *

(d) To be eligible for certification as qualified member of the engine department, an applicant shall complete approved basic safety-training as set out in STCW Regulation VI/1 and section A–VI/1 of the STCW Code. This training must encompass personal survival, firefighting and fire prevention, elementary first aid, and personal safety and social responsibilities. The Officer in Charge, Marine Inspection (OCMI), may approve a basic safety-training program designed for a particular ship or type of service; however, in that case, the OCMI will limit the endorsement by indicating the particular ship or type of service. The training must have been completed within 5 years or less before the date of application for the endorsement. For renewal, the applicant shall prove that his or her competence in all the subjects encompassed by the training has been assessed and established within the last 5 years.

(e) To be eligible for certification as qualified member of the engine department, an applicant shall meet the requirements of STCW Regulation III/4 and section A–II/4 of the STCW Code, if he or she will be either serving in a rating forming part of a watch in a manned engine-room or designated to perform duties in a periodically unmanned engine-room on a seagoing ship driven by main propulsion machinery of 750 kW [1,000 hp] propulsion power or more.

17. in § 12.15–7, paragraph (c) is added to read as follows:

§ 12.15–7 Service or training requirements.

* * * * *

(c) To qualify to receive an STCW endorsement as ''rating forming part of a watch in a manned engine-room or designated to perform duties in a periodically unmanned engine-room'' on a seagoing vessel driven by main propulsion machinery of 750 kW [1,000 hp] propulsion power or more, an applicant shall prove seagoing service that includes training and experience associated with engine-room watchkeeping and involves the performance of duties carried out under the direct supervision of a qualified engineer officer or a member of a qualified rating. The training must be sufficient to establish that the applicant has achieved the standard of competence prescribed in table A–I/4 of the STCW Code, in accordance with the methods of demonstrating competence and the criteria for evaluating competence specified in that table.

18. in § 12.15–11, the heading is revised, paragraphs (a) through (j) are redesignated as paragraphs (1) through (10), the introductory text is designated as paragraph (a), and paragraph (b) is added, to read as follows:

§ 12.15–11 General provisions respecting merchant mariner's document endorsed for service as qualified member of the engine department.

* * * * *

(b) The holder of a merchant mariner's document endorsed for the rating of qualified member of the engine department shall hold the appropriate STCW endorsement when either serving in a ''rating forming part of a watch in a manned engine-room or designated to perform duties in a periodically unmanned engine-room'' on a seagoing vessel driven by main propulsion machinery of 750 kW [1,000 hp] propulsion power or more.

19. Section 12.25–45 is added to read as follows:

§ 12.25–45 Electronics technician.

(a) An applicant is eligible to have his or her merchant mariner's document endorsed for the rating of electronics technician if he or she holds a certificate of completion from—

(1) Approved training that includes instruction and assessment by qualified instructors and designated examiners, and requires the student both to complete appropriate examinations and practical demonstrations to establish competence in the basic knowledge, understanding, and skills necessary to perform maintenance, diagnosis, and repair of electronic equipment and installations on board ships and to make practical use of maintenance and repair manuals provided for such equipment and installations; or

(2) An FCC- or Coast-Guard-approved course that covers at least the scope and content of training outlined in section B–IV/2 of the STCW Code for training in maintenance of GMDSS installations on board ships.

(b) Only an applicant fulfilling the requirements of paragraph (a)(2) of this section may be designated to perform at-sea maintenance requirements imposed by SOLAS Regulation IV/15.

(c) An applicant fulfilling only the requirements of paragraph (a)(1) of this section will have his or her document endorsed as follows: ''electronics technician—non-GMDSS.'' No one whose document bears this endorsement may be designated to perform at-sea maintenance of GMDSS installations when such a designation is used to meet the maintence requirements imposed by SOLAS Regulation IV/15.

20. Subpart 12.30, consisting of 12.30–1 through 12.30–5, is added to read as follows:

Subpart 12.30—Ro-Ro Passenger Ships

Sec.
12.30–1 Purpose of regulations.
12.30–3 Definitions.
12.30–5 General requirements.

Subpart 12.30—Ro-Ro Passenger Ships

§ 12.30–1 Purpose of regulations.

The purpose of the regulations in this subpart is to establish requirements for certification of seamen serving on roll-on/roll-off (Ro-Ro) passenger ships.

§ 12.30–3 Definitions.

Roll-on/roll-off (Ro-Ro) passenger ship means a passenger ship with ro-ro cargo

spaces or special-category spaces as defined in the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS), and to which a SOLAS Certificate is issued.

MMD means merchant mariner's document.

12.30–5 General requirements.

To serve on a ro-ro passenger ship after January 30, 2002, a person holding an MMD and performing duties toward safety, cargo-handling, or care for passengers shall meet the appropriate requirements of STCW Regulation V/2 and section A–V/2 of the STCW Code, and have his or her MMD endorsed to show his or her meeting those requirements.

PART 15—MANNING REQUIREMENTS

1. The authority citation for part 15 continues to read as follows:

Authority: 46 U.S.C. 3703, 8105; 49 CFR 1.46.

2. Section 15.105 is added to subpart A to read as follows:

§ 15.105 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the Federal Register and the material must be available to the public. All approved material is available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC and at the U.S. Coast Guard, Operating and Environmental Standards Division, 2100 Second Street SW., Washington, DC 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are as follows:

International Maritime Organization (IMO)

4 Albert Embankment, London, SE1 7SR, England.

Amendments to the Annex to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW), and the associated Seafarers' Training, Certification and Watchkeeping Code (STCW Code), as adopted under resolutions 1 and 2, respectively, by the Conference of parties to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, held at IMO from June 26 to July 7, 1995—15.401; 15.403; 15.705.

3. In § 15.301, the periods at the ends of paragraphs (b)(7) and (b)(10) are removed, a semicolon is added in each place, the word ''and'' is added after the semicolon after paragraph (b)(10), and paragraph (b)(11) is added; and paragraphs (c)(7) and (c)(8) are added to paragraph (c) as that paragraph will stand after the revision effective on March 31, 1996, all to read as follows:

§ 15.301 Definitions of terms used in this part.

* * * * *

(b)* * *

(11) GMDSS radio operator.

(c) * * *

(7) Electronics technician.

(8) Electronics technician—Non-GMDSS.

* * * * *

4. In § 15.401, the heading is revised, the existing text is designated as paragraph (a), and paragraphs (b), (c), (d), (e), (f), (g), (h), and (i) are added, to read as follows:

§ 15.401 Employment and service within restrictions of license, document, and STCW endorsement.

* * * * *

(b) On a vessel operating beyond the boundary line, no person may employ or engage any person to serve, and no person may serve, in a position in which a person shall hold an STCW endorsement, including master, chief mate, chief engineer, second engineer, officer of the navigational or engineering watch, or radio operator, unless the person serving holds an appropriate, valid STCW certificate or endorsement issued in accordance with part 10 or 12 of this chapter.

(c) On a seagoing vessel of 500 gross tons or more, no person may employ or engage any person to serve, and no person may serve, in a rating forming part of the navigational watch, except for training, unless the person serving holds an appropriate, valid STCW certificate or endorsement issued in accordance with part 12 of this chapter.

(d) After January 31, 1997, no person may either be engaged or employed to serve on a roll-on/roll-off (ro-ro) passenger ship to which a SOLAS certificate has been issued, or perform duties on such a ship, unless he or she holds a license or document endorsed for service on ro-ro passenger ships in accordance with § 10.1005 or § 12.30–5, of this chapter, whichever is appropriate to the service or the duties.

(e) On a seagoing vessel driven by main propulsion machinery of 750 kW [1,000 hp] propulsion power or more, no person may employ or engage any person to serve, and no person may serve, in a rating forming part of a watch in a manned engine-room, nor may any person be designated to perform duties in a periodically unmanned engine-room, except for training or for the performance of duties of an unskilled nature, unless the person serving holds an appropriate, valid STCW certificate or endorsement issued in accordance with part 12 of this chapter.

(f) After January 31, 2002, on a seagoing vessel required to comply with provisions of the Global Maritime Distress and Safety System (GMDSS) in Chapter IV of SOLAS, no person may employ or engage any person to serve, and no person may serve, as the master, chief mate, or officer of the navigational watch, unless the person serving holds the appropriate Certificate for Operator of Radio in Global Maritime Distress and Safety System (GMDSS).

(g) After January 31, 1997, on a seagoing vessel required to comply with provisions of the GMDSS in Chapter IV of SOLAS, no person may employ or engage any person to serve, and no person may serve, as the person designated to perform at-sea maintenance of GMDSS installations, when such designation is used to meet the maintenance requirements imposed by STCW Regulation IV/15, unless the person serving holds an electronic-technician endorsement not limited to non-GMDSS electronic installations.

(h) After January 31, 2002, on a seagoing vessel fitted with an Automatic Radar-Plotting Aid (ARPA), no person may employ or engage any person to serve, and no person may serve, as the master, chief mate, or officer of the navigational watch, unless the person serving has been trained in the use of ARPA in accordance with § 10.205 or § 10.209 of this chapter.

(i) The provisions of paragraphs (b) through (g) of this section are effective as of August 1, 1998.

5. Section 15.403 is added to read as follows:

§ 15.403 Familiarization and basic safety-training.

(a) After January 31, 1997, on a seagoing vessel, no person may assign any person to perform shipboard duties, and no person may perform those duties, unless the person performing them has received—

(1) Familiarization training in personal survival techniques as set out in the standard of competence under STCW Regulation VI/1; or

(2) Sufficient training or instruction, to be able to—

(i) Communicate with other persons on board on elementary safety matters and understand information symbols, signs, and alarm signals covering information on safety;

(ii) Know what to do if a person falls overboard; if fire or smoke is detected; or if the fire or abandon-ship alarm sounds;

(iii) Identify stations for muster and embarkation, and emergency-escape routes;

(iv) Locate and don life-jackets;

(v) Raise the alarm and know the use of portable fire extinguishers;

(vi) Take immediate action upon encountering an accident or other medical emergency before seeking further medical assistance on board; and

(vii) Close and open the fire, weathertight, and watertight doors fitted in the particular ship other than those for hull openings.

(b) After January 31, 1997, on a seagoing vessel, no person may assign any person on board a ship, as part of the complement with designated safety or pollution-prevention duties in the operation of the ship, to perform shipboard duties, and no person may perform those duties, unless the person performing them has—

(1) Received approved basic safety-training or instruction as set out in the standards of competence under STCW Regulation VI/1, particularly with respect to personal survival techniques, fire prevention and fire-fighting, elementary first aid, and personal safety and social responsibilities; and

(2) Established competence within the last 5 years as part of an approved training program, in accordance with the methods and criteria prescribed under STCW Regulation VI/1.

(c) Each person who has met the requirements of either §§ 10.205 and 10.209 of this chapter or §§ 12.05–3, 12.10–3, and 12.15–3 of this chapter meets the requirements of this section without further training or assessment.

6. Section 15.411 is added to read as follows:

§ 15.411 Maintenance of seamen's records by owner or operator.

Each owner or operator of a U.S.-documented vessel that operates beyond the boundary line shall ensure that procedures are in place, in respect of licensed and unlicensed seamen who serve on each such vessel, to ensure that the following information is maintained throughout their service, and is readily accessible to those in management responsible for the safety of vessels and prevention of marine pollution:

(a) Medical fitness.

(b) Experience and training relevant to assigned shipboard duties.

(c) Assessment of competence in performance of assigned shipboard duties.

7. In § 15.705, paragraph (f) is revised to read as follows:

§ 15.705 Watches.

* * * * *

(f) Masters of vessels that operate beyond the boundary line shall observe the principles concerning watchkeeping as set out in STCW Regulation VIII/2 and section A–VIII/2 of the STCW Code.

8. In § 15.710, the heading is revised, paragraphs (a) through (d) are redesignated as paragraphs (1) through (4), respectively, the introductory text is designated as paragraph (a), and paragraphs (b) and (c) are added to read as follows:

§ 15.710 Working hours and rest periods.

* * * * *

(b) After January 31, 1997, each person assigned duty as officer in charge of a navigational or engineering watch, or duty in a rating forming part of a navigational or engineering watch, on any vessel that operates beyond the boundary line shall receive a minimum period of 10 hours of rest in any 24-hour period, except in an emergency, a drill, or any other overriding operation condition, provided—

(1) The hours of rest are divided into no more than two periods, one of which must be at least 6 hours in length; and

(2) The minimum period of 10 hours of rest may be reduced to not less than 6 consecutive hours as long as—

(i) No reduction extends beyond 2 days; and

(ii) He or she receives at least 70 hours of rest in each 7-day period.

(c) The Master shall post watch schedules where they are easily accessible. Each schedule must include each affected person.

(d) For purposes of applying this section—

(1) *Rest period* means a period of time during which no tasks are assigned to the person concerned, the person is not scheduled to perform any duty, and the person is allowed to sleep without being interrupted; and

(2) *Overriding operational conditions* means circumstances in which essential shipboard work cannot be delayed for reasons of safety or environment or for reasons not foreseeable at the commencement of the voyage.

Dated: 5 March 1996.

Joseph J. Angelo,

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

[FR Doc. 96–7019 Filed 3–25–96; 8:45 am]

BILLING CODE 4910–14–M

federal register

Tuesday
March 26, 1996

Part VIII

Department of Justice

Bureau of Prisons

28 CFR Part 549
Plastic Surgery; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 549

[BOP–1020–F]

RIN 1120–AA26

Plastic Surgery

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is revising its regulations concerning the circumstances and procedures under which the Bureau approves plastic surgery for inmates. Criteria under which plastic surgery may be approved are as follows: as a component of standard medical/surgical treatment, when necessary for the good order and security of the institution, and in other special situations as determined by the Medical Director. Additionally, these regulations have been reorganized to emphasize ''informed consent'' and to remove unnecessary provisions. This revision is intended to provide for the continued efficient and orderly operation of the Bureau and its institutions.

EFFECTIVE DATE: April 25, 1996.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is revising its regulations on plastic surgery (28 CFR part 549, subpart D). A proposed rule on this subject was published in the Federal Register on October 20, 1995 (60 FR 54288).

The proposed regulations stipulated in the statement of purpose (28 CFR 549.50) that the Bureau ordinarily does not perform plastic surgery on inmates to correct preexisting disfigurements (including tattoos) on any part of the body. Plastic surgery may be performed when it is a component of the presently medically necessary standard of treatment. Plastic surgery may also be approved under special circumstances: namely, for the good order and security of the institution. Approval procedures for requests, whether for medical reasons or special circumstances, are contained in § 549.51. ''Informed consent'' requirements were redesignated as a separate section (§ 549.52) for the sake of emphasis. Procedures relating to staff processing of inmate identification records were removed because these administrative details are better addressed in internal instructions to staff.

The Bureau received one comment on the proposed rule. This comment supported the adoption of the proposed rule. The Bureau is therefore adopting the proposed rule as a final rule without change.

Members of the public may submit comments concerning this rule by writing to the address cited above. These comments will be considered but will receive no response in the Federal Register.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 549

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 549 in subchapter C of 28 CFR, chapter V is amended as set forth below.

Subchapter C—Institutional Management

PART 549—MEDICAL SERVICES

1. The authority citation for 28 CFR part 549 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4005, 4042, 4045, 4081, 4082, (Repealed in part as to offenses committed on or after November 1, 1987), 4241–4247, 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5039: 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. Subpart D, consisting of §§ 549.50 and 549.51, is revised to consist of §§ 549.50 through 549.52 as follows:

Subpart D—Plastic Surgery

Sec.
549.50 Purpose and scope.
549.51 Approval procedures.
549.52 Informed consent.

Subpart D—Plastic Surgery

§ 549.50 Purpose and scope.

The Bureau of Prisons does not ordinarily perform plastic surgery on inmates to correct preexisting disfigurements (including tattoos) on any part of the body. In circumstances where plastic surgery is a component of a presently medically necessary standard of treatment (for example, part of the treatment for facial lacerations or for mastectomies due to cancer) or it is necessary for the good order and security of the institution, the necessary surgery may be performed.

§ 549.51 Approval procedures.

The Clinical Director shall consider individually any request from an inmate or a BOP medical consultant.

(a) In circumstances where plastic surgery is a component of the presently medically necessary standard of treatment, the Clinical Director shall forward the surgery request to the Office of Medical Designations and Transportation for approval.

(b) If the Clinical Director recommends plastic surgery for the good order and security of the institution, the request for plastic surgery authorization will be forwarded to the Warden for initial approval. The Warden will forward the request through the Regional Director to the Medical Director. The Medical Director shall have the final authority to approve or deny this type of plastic surgery request.

(c) If the Clinical Director is unable to determine whether the plastic surgery qualifies as a component of presently medically necessary standard of treatment, the Clinical Director may forward the request to the Medical Director for a final determination in accordance with the provisions of paragraph (b) of this section.

§ 549.52 Informed consent.

Approved plastic surgery procedures may not be performed without the informed consent of the inmate involved.

[FR Doc. 96–7157 Filed 3–25–96; 8:45 am]

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federal register

Tuesday
March 26, 1996

Part IX

Department of Education

34 CFR Part 299

General Provisions, Elementary and Secondary Education Act; Proposed Rule

DEPARTMENT OF EDUCATION

34 Part 299

RIN 1810–AA82

General Provisions, Elementary and Secondary Education Act

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Secretary of Education (the Secretary) proposes to issue general regulations governing programs under the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (the ''Elementary and Secondary Education Act'', ''ESEA'' or the ''Act''). These proposed regulations would implement several provisions in Title XIV, General Provisions, of the Act. These proposed regulations would generally govern all programs under the Act, and would establish uniform provisions that would minimize burdensome differences in implementing these provisions in individual programs.

The areas that would be covered by these proposed regulations for ESEA programs include: other regulations that would apply; priorities for empowerment zones or enterprise communities in discretionary grants; the consolidation of State and local administrative funds; maintenance of effort; services to private school children and teachers; and complaint procedures. In addition, the proposed regulations would provide further flexibility to States under Title III of the Goals 2000: Educate America Act.

DATES: Comments must be received on or before May 10, 1996.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Delores Warner, U.S. Department of Education, Portals Building, 1250 Maryland Avenue SW., Room 4000, Washington, DC 20202–6110. The fax number for submitting comments is (202) 260–0310. Comments may also be sent through the Internet to General__Provisions@ed.gov.

To ensure that public comments have maximum effect in developing the final regulations, the Department urges that each comment clearly identify the specific section or sections of the regulations that the comment addresses and that comments be in the same order as the regulations.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: For further information on this part, please contact Delores Warner. Telephone: (202) 260–1941. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On October 20, 1994, the President signed into law the Improving America's Schools Act of 1994 (IASA) (Pub. L. 103–382). The IASA reauthorizes and fundamentally changes the ESEA, redesigning its programs so that they work together to support high-quality teaching and learning to help all children learn challenging material in academic areas and acquire the knowledge and skills they will need to succeed in the 21st century.

Throughout the reauthorized Elementary and Secondary Education Act, including Title XIV of the Act, provisions are designed to make it easier for programs to work together with, rather than separately from, one another. In addition, the Act fosters the operation of ESEA programs in unison with the broader education that children receive. For example, the reauthorized Act supports State and community reform efforts geared to challenging State academic standards, particularly those initiated or supported by the Goals 2000: Educate America Act.

Unlike the reauthorized ESEA programs, earlier ESEA programs often were not coordinated with each other and with other educational programs in the schools. The previous programs often were not designed to target funds to areas, schools or students with the greatest needs for assistance, nor were they designed to support State and local efforts at broader educational reform. They were often burdensome without adequate provisions for needed flexibility.

Virtually all of the major ESEA programs have been redesigned to include greater flexibility at the State and local levels, to support directly comprehensive State and local reforms of teaching and learning, and to ensure that all children—regardless of background and whatever school they attend—can achieve at high levels.

In implementing the Act, the Department, is issuing regulations only where absolutely necessary, and is providing flexibility to the maximum extent permitted by statute. The regulations proposed in Part 299 are consistent with this approach and are intended to provide support to educators at the State and local levels for the appropriate implementation of provisions in Title XIV and of the Act as a whole. Title XIV contains provisions that allow: flexibility, promote coordinated program services and allow waivers of certain provisions to increase the quality of instruction or improve academic performance, consolidated State and local plans and applications, consolidation of State and local administrative funds, and uniform provisions that apply to programs authorized in the ESEA. Most of the provisions of Title XIV are not the subject of regulations. The Department has issued, separately from this notice of proposed rulemaking (NPRM), non-binding guidance on a number of Title XIV provisions such as State consolidated plans (sections 14302 of the Act), waivers (section 14401 of the Act), and the Gun-Free Schools Act (sections 14601–03 of the Act). Copies of this guidance are available from Delores Warner, U.S. Department of Education, 1250 Maryland Avenue SW., Room 4000, Portals Building, Washington, DC 20202–6110.

Summary of Provisions

Section 299.1 of these proposed regulations would provide general information about the scope of these regulations and the laws and regulations that would apply to ESEA programs. Further guidance about which general administrative regulations would apply is provided in the discussion of § 299.2 in the next paragraph of this summary.

Section 299.2 of these proposed regulations would provide flexibility by permitting a State to formally adopt its own general provisions, in lieu of 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) of the Education Department General Provisions Regulations for most ESEA programs if the State meets several minimal requirements. This flexibility is similar to flexibility that was previously included in regulations for Chapters 1 and 2 of ESEA before the 1994 amendments.

Section 299.2 would also indicate that 34 CFR Part 80 would apply to direct grant programs under ESEA and to Title XI. While this would provide States in ESEA State-administered programs the option of adopting and using their own procedures as an alternative to Part 80, the Department believes that the application of Part 80 to direct grant programs and to Title XI provides the appropriate balance of flexibility and accountability for results in those programs. As the Department continues to look for other ways to simplify the

direct grant process, the Department particularly invites comments on the appropriate balance of flexibility and accountability in direct grant and Title XI programs.

Section 299.2 would indicate that 34 CFR Part 80 applies to State, local, and Indian tribal governments under direct grant programs, and programs under Title XI of ESEA (Coordinated Services). 34 CFR Part 80 also applies to other programs under the ESEA unless a State formally adopts its own written fiscal and administrative requirements for expending and accounting for all funds received by State educational agencies (SEA) and local educational agencies (LEAs) under this part that meet certain minimal requirements contained in § 299.2. This flexibility would also apply to Title III of the Goals 2000: Educate America Act.

Section 299.2 would not affect the applicability of the Department's other general administrative regulations to ESEA programs. Therefore, unless a particular regulatory provision is inconsistent with a statutory provision (in which case the statute controls), the Department's general administrative regulations apply to ESEA programs as follows:

(a) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations) applies to grantees other than State and local governments and Indian tribal organizations.

(b) 34 CFR Part 75 (Direct Grant Programs), except for § 75.650 (participation of students enrolled in private schools), applies to all direct grant programs.

(c) 34 CFR Part 76 (State-Administered Programs), except for §§ 76.650 through 76.662 (participation of students enrolled in private schools), applies to State administered grant programs.

(d) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(e) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities) applies to some of the ESEA programs.

(f) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), as discussed in this preamble.

(g) 34 CFR Part 81 (General Education Provisions Act—Enforcement) applies to all ESEA programs except for Title VIII (Impact Aid) of ESEA.

(h) 34 CFR Part 82 (New Restrictions on Lobbying) applies to all ESEA programs.

(i) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)) applies to all ESEA programs.

(j) 34 CFR Part 86 (Drug-Free Schools and Campuses) applies to institutions of higher education.

Guidance on which of these provisions apply to Title VIII (Impact Aid) will be issued separately.

Section 299.3 of these proposed regulations would authorize the Secretary to coordinate discretionary grants under the ESEA with the Empowerment Zones and Enterprise Community initiative, a critical community revitalization strategy. Under this initiative, the United States Department of Housing and Urban Development or the United States Department of Agriculture has designated certain urban and rural areas as Empowerment Zones, including Supplemental Empowerment Zones, or Enterprise Communities. These selected areas, which are characterized by pervasive poverty, unemployment, and general distress, are implementing locally designed strategies for building healthy, safe, and economically vibrant communities. Interested individuals may contact the Department of Housing and Urban Development at 1–800–998–9999 for additional information on the Empowerment Zone and Enterprise Community initiative.

The discretionary grants under the ESEA can play a key role in helping Empowerment Zones and Enterprise Communities address key educational needs as part of a community revitalization strategy. Therefore, to encourage grantees to concentrate resources to address multi-faceted problems, under the proposed § 299.3, the Secretary would be able to give priority to applications that propose projects that serve these zones and communities.

In § 299.4, the Secretary proposes to authorize each SEA to adopt and use its own reasonable standards in determining whether the majority of its resources for administrative purposes come from non-Federal sources, a prerequisite for the consolidation of State administrative funds as authorized by section 14201 of the ESEA. Under this section, SEAs would also be permitted to adopt reasonable standards for determining when to allow the consolidation of local administrative funds. This section would provide flexibility for SEAs in these State-administered programs and fulfill the Secretary's obligation to issue regulations under section 14203.

Sections 299.5–299.12 of these proposed regulations would contain uniform provisions regarding maintaining fiscal effort, serving private school children and teachers, and for filing and resolving complaints from the public. In the past, these requirements have varied program-by-program. The revised provisions discussed as follows are designed to reduce burden for grantees by making their implementation uniform among ESEA programs.

The proposed regulations in § 299.5 for maintenance of effort would, for the first time, provide uniform provisions to reduce the burden of requiring different recordkeeping for several programs. It would also provide more flexibility than in previous regulations by excluding all Federal funds and supplemental funds spent as a result of a Presidentially declared disaster. The exclusion of Federal funds from maintenance of effort calculations is consistent with the purposes of the statutory provision. The Secretary interprets the maintenance of effort provision in section 14501 of Title XIV not to apply to Title VI programs, because of the specific maintenance of effort provision in section 6401 of Title VI. Therefore, § 299.5 also does not apply to Title VI programs.

The proposed regulations governing participation of private schools students, teachers and other personnel in §§ 299.6–299.9 are similar to the regulations for Title I of the Act (34 CFR §§ 200.10–200.14 (published on July 3, 1995 (60 FR 34800)). For example, § 299.7 on equitable participation includes the same provisions on ''equal expenditures'' and ''equitable basis'' as in 34 CFR § 200.11, except that § 299.7 does not include provisions relating to the specific distribution of Title I funds. Instead of simply cross-referencing the Title I regulations, however, for the convenience of the reader, full provisions are included in this notice.

Sections 299.6–299.9 also provide for more flexibility than in general regulations on participation of students enrolled in private schools currently in 34 CFR §§ 76.650–76.662 that would otherwise apply. Sections 299.6–299.9 would supersede the provisions of 34 CFR §§ 76.650–76.662 for the programs listed in § 299.6.

Sections 299.10–299.12 require States to establish complaint procedures in State-administered programs, so that the public is provided an opportunity to bring complaints to the attention of State program administrators. The provisions are similar to those previously included in the regulations for Chapter 1 of ESEA before the 1994 amendments, but the new regulations would provide the SEA with considerably more flexibility in

establishing reasonable procedures for resolving these complaints by authorizing SEAs to adopt their own reasonable time limits for resolving a complaint.

Executive Order 12866

1. Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order, the Secretary has assessed the potential costs and benefits of this regulatory action. The potential costs and benefits associated with the proposed regulations are minimal and to the extent there are costs, the costs result from the statutory requirements and regulations determined by the Secretary to be necessary for administering these programs effectively and efficiently. To the extent there are burdens specifically associated with information collection requirements, they are identified and explained elsewhere in this preamble under the heading ''*Paperwork Reduction Act of 1995*.''

Thus, in assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs. The Secretary has also determined that this regulatory action does not interfere unduly with State and local governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comments on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

2. Clarity of the Regulations

Executive Order 12866 requires each Federal agency to write regulations that are easy to understand.

The Secretary invites comment on how to make these regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with the clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example ''§ 299.1 What are the purpose and scope of the regulations?'') (4) Is the description of the proposed regulations in the ''Supplementary Information'' section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern whether these proposed regulations are easy to understand should also be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, S.W. (room 5121, FOB–10), Washington, DC, 20202–2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are small local educational agencies (LEAs), and public or nonprofit private agencies receiving Federal funds under the ESEA programs. The proposed regulations would not have a significant economic impact on the small entities affected because the proposed regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The proposed regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1995

Collection of Information: General Provisions, Elementary and Secondary Education Act: Complaint Process: Sections 299.10–299.12 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review under that Act.

Under sections 299.10–299.12, an SEA is required to adopt written procedures for receiving and resolving on a timely basis complaints from an organization or individual that the SEA or an agency or consortium of agencies is violating a Federal statute or regulations that apply to a covered program listed in § 299.10(b). The resolution of a complaint by the SEA may be reviewed by the Secretary, at the Secretary's discretion.

The likely respondents to the collection of information in the complaint process are individuals and organizations that submit complaints. The information submitted is used to resolve complaints and will be collected as complaints are submitted.

We estimate that each State will receive, an average of twenty complaints each year, and that each complaint will take an average of four burden hours to prepare. Therefore, the total annual reporting and recordkeeping burden that will result from the collection of this information is 4560 burden hours (fifty-seven State entities, multiplied by twenty complaints, multiplied by four burden hours for preparing each complaint).

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Desk Officer for U.S. Department of Education.

The Department considers comments by the public on these proposed collections of information in:

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Intergovernmental Review

Some of the programs that would be affected by these regulations are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an inter-governmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection during and after the comment period, in rooms 4400 and 4100, respectively, Portals Building, 1250 Maryland Avenue, S.W., Washington, DC., between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

List of Subjects in 34 CFR Part 299

Administrative practice and procedure, Education, Elementary and secondary education, Grant programs—education, Private schools, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number does not apply)

Dated: March 20, 1996.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Part 299 to read as follows:

PART 299—GENERAL PROVISIONS

Subpart A—Purpose and Applicability

Sec.

299.1 What are the purpose and scope of these regulations?
299.2 What regulations apply to ESEA programs?

Subpart B—Selection Criteria

299.3 What priority may the Secretary establish for activities in an Empowerment Zone or Enterprise Community?

Subpart C—Consolidation of State and Local Administrative Funds

299.4 What requirements apply to the consolidation of state and local administrative funds?

Subpart D—Fiscal Requirements

299.5 What maintenance of effort requirements apply to ESEA programs?

Subpart E—Services to Private School Students and Teachers

299.6 What are the responsibilities for providing services to children and teachers in private schools?
299.7 What are the factors for determining equitable participation of children and teachers in private schools?
299.8 What are the requirements to ensure that funds do not benefit a private school?
299.9 What are the requirements concerning property, equipment, and supplies for the benefit of private school children and teachers?

Subpart F—Complaint Procedures

299.10 What complaint procedures shall an SEA adopt?
299.11 What are included in the complaint procedures?
299.12 How does an organization or individual file a complaint?

Authority: 20 U.S.C. 1221e–3, unless otherwise noted.

Subpart A—Purpose and Applicability

§ 299.1 What are the purpose and scope of these regulations?

(a) This part establishes uniform administrative rules for programs in Titles I through XIII of the Elementary and Secondary Education Act of 1965, as amended (ESEA), except where otherwise indicated. As indicated in particular sections of this part, certain provisions apply only to a specific group of programs.

(b) If an ESEA program does not have implementing regulations, the Secretary implements the program under the authorizing statute, and, to the extent applicable, Title XIV of ESEA, the General Education Provisions Act, the regulations in this part, and the Education Department General Administrative Regulations (34 CFR Parts 74 through 86) that are not inconsistent with specific statutory provisions of this Act.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 299.2 What regulations apply to ESEA programs?

With regard to the applicability of Education Department General Administrative Regulations (EDGAR) to the ESEA programs (in addition to any other specific implementing regulations):

(a) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) applies to State, local, and Indian tribal governments under direct grant programs (as defined in 34 CFR 75.1(b)), and programs under Title XI of ESEA.

(b) 34 CFR Part 80 also applies to all other programs under the ESEA and to programs under Title III of the Goals 2000: Educate America Act (Title III of Goals 2000), unless a State formally adopts its own written fiscal and administrative requirements for expending and accounting for all funds received by State educational agencies (SEAs) and local educational agencies (LEAs) under the ESEA and Title III of Goals 2000. If a State adopts its own alternative requirements, the requirements must be available for inspection upon the request of the Secretary or the Secretary's representatives and must—

(1) Be sufficiently specific to ensure that funds received under ESEA and Title III of Goals 2000 are used in compliance with all applicable statutory and regulatory provisions;

(2) Ensure that funds received under ESEA and Title III of Goals 2000 are spent only for reasonable and necessary costs of operating programs under this part; and

(3) Ensure that funds received under ESEA and Title III of Goals 2000 are not used for general expenses required to carry out other responsibilities of State or local governments.

(Authority: 20 U.S.C. 1221e–3(a)(1))

Subpart B—Selection Criteria

§ 299.3 What priority may the Secretary establish for activities in an Empowerment Zone or Enterprise Community?

For any ESEA discretionary grant program, the Secretary may establish a priority, as authorized by 34 CFR 75.105(b), for projects that will—

(a) Use a significant portion of the program funds to address substantial problems in an Empowerment Zone, including a Supplemental Empowerment Zone, or an Enterprise Community designated by the United States Department of Housing and Urban Development or the United States Department of Agriculture; and

(b) Contribute to systemic educational reform in an Empowerment Zone, including a Supplemental Empowerment Zone, or an Enterprise Community, and are made an integral

part of the Zone or Community's comprehensive community revitalization strategies.

(Authority: 20 U.S.C. 2831(a))

Subpart C—Consolidation of State and Local Administrative Funds

§ 299.4 What requirements apply to the consolidation of state and local administrative funds?

An SEA may adopt and use its own reasonable standards in determining whether—

(a) The majority of its resources for administrative purposes come from non-Federal sources to permit the consolidation of State administrative funds in accordance with section 14201 of the Act; and

(b) To approve an LEA's consolidation of its administrative funds in accordance with section 14203 of the Act.

(Authority: 20 U.S.C. 8821 and 8823)

Subpart D—Fiscal Requirements

§ 299.5 What maintenance of effort requirements apply to ESEA programs?

(a) *General.* An LEA receiving funds under a covered program listed in subsection (b) may receive its full allocation of funds if the SEA finds that either the combined fiscal effort per student or the aggregate expenditures of State and local funds with respect to the provision of free public education in the LEA for the preceding fiscal year was not less than 90 percent of combined fiscal effort per student or the aggregate expenditures for the second preceding fiscal year.

(b) *Covered programs.* Programs covered by this subpart are the following:

(1) Part A of Title I (Improving Basic Programs Operated by Local Educational Agencies).

(2) Title II (Eisenhower Professional Development Program) (other than section 2103 and part C of this title).

(3) Subpart 2 of Part A of Title III (State and Local Programs for School Technology Resources).

(4) Part A of Title IV (Safe and Drug-Free Schools and Communities) (other than section 4114).

(c) *Meaning of ''preceding fiscal year.''* For purposes of determining if the requirement of paragraph (a) of this section is met, the ''preceding fiscal year'' means the Federal fiscal year, or the 12-month fiscal period most commonly used in a State for official reporting purposes, prior to the beginning of the Federal fiscal year in which funds are available for obligation by the Department.

Example: For fiscal year 1995 funds, that are first made available on July 1, 1995, if a State is using the Federal fiscal year, the ''preceding fiscal year'' is Federal fiscal year 1994 (which began on October 1, 1993 and ended September 30, 1994) and the ''second preceding fiscal year'' is Federal fiscal year 1993 (which began on October 1, 1992). If a State is using a fiscal year that begins on July 1, 1995, the ''preceding fiscal year'' is the 12-month period ending on June 30, 1994, and the ''second preceding fiscal year,'' is the period ending on June 30, 1993.

(d) *Expenditures.* (1) In determining an LEA's compliance with paragraph (a) of this section, the SEA shall consider only the LEA's expenditures from State and local funds for free public education. These include expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities.

(2) The SEA may not consider the following expenditures in determining an LEA's compliance with the requirement in paragraph (a) of this section:

(i) Any expenditures for community services, capital outlay, debt service or supplemental expenses made as a result of a Presidentially declared disaster.

(ii) Any expenditures made from funds provided by the Federal Government.

(Authority: 20 U.S.C. 8891)

Subpart E—Services to Private School Students and Teachers

§ 299.6 What are the responsibilities for providing services to children and teachers in private schools?

(a) *General.* An agency or consortium of agencies receiving funds under a program listed in subsection (b) of this section shall, after timely and meaningful consultation with appropriate private school officials, in accordance with that section, provide special educational services or other benefits under this part, on an equitable basis, to children who are enrolled in private elementary and secondary schools, and are eligible for that program, and to their teachers or other educational personnel.

(b) *Covered programs.* In accordance with section 14503(b) of ESEA, programs covered by this subpart are the following:

(1) Part C of Title I (Migrant Education).

(2) Title II (Professional Development) (other than section 2103 and part C of this title).

(3) Title III (other than Part B of the Title) (Star Schools).

(4) Part A of Title IV (Safe and Drug-Free Schools and Communities) (other than section 4114).

(5) Title VI (Innovative Education Program Strategies).

(6) Title VII (Bilingual Education).

(c) *Provisions not applicable.* Sections 75.650 and 76.650 through 76.662 of Part 34 of the Code of Federal Regulations (participation of students enrolled in private schools) do not apply to covered programs.

(Authority: 20 U.S.C. 8893)

§ 299.7 What are the factors for determining equitable participation of children and teachers in private schools?

(a) *Equal expenditures.* (1) Expenditures of funds made by an agency or consortium of agencies under a covered program for services for eligible private school children and their teachers and other educational personnel must be equal on a per-pupil basis to the amount of funds expended for participating public school children and their teachers and other educational personnel taking into account the number and educational needs of those children and their teachers or other educational personnel.

(2) Before determining equal expenditures under paragraph (a)(1) of this section, an agency or consortium of agencies shall pay for the reasonable and necessary administrative costs of providing services to public and private school children and their teachers or other educational personnel, from the agency's or consortium of agencies' total allocation of funds under the applicable ESEA program.

(b) *Services on an equitable basis.* (1) The services that an agency or consortium of agencies provides to eligible private school children and their teachers and other educational personnel must also be equitable in comparison to the services and other benefits provided to public school children and their teachers or other educational personnel participating in a program under this subpart.

(2) Services are equitable if the agency or consortium of these agencies—

(i) Addresses and assesses the specific needs and educational progress of eligible private school children and their teachers or other educational personnel on a comparable basis as public school children and their teachers or other educational personnel;

(ii) Determines the number of students to be served on an equitable basis;

(ii) Meets the equal expenditure requirements under paragraph (a) of this section; and

(iii) Provides private school children and their teachers or other educational personnel with an opportunity to participate that—

(A) Is equitable to the opportunity and the benefits provided to public school children and their teachers or other educational personnel; and

(B) Provides reasonable promise of those children meeting challenging academic standards as called for by the State's student performance standards and has their teachers or other educational personnel assisting these students in meeting high standards.

(3) The agency or consortium of these agencies shall make the final decisions with respect to the services to be provided to eligible private school children and their teachers or other educational personnel.

(c) If the needs of private school students, their teachers or other educational personnel are different from the needs of students, teachers or other educational personnel in the public schools, the agency or consortium of these agencies shall provide program benefits for the private school students, teachers, or other educational personnel that are different from the benefits the subgrantee provides for the public school children and their teachers or other educational personnel.

(Authority: 20 U.S.C. 8893)

§ 299.8 What are the requirements to ensure that funds do not benefit a private school?

(a) An agency or consortium of these agencies shall use funds under a covered program to provide services that supplement, and in no case supplant, the level of services that would, in the absence of services under that ESEA program, be available to participating children and their teachers or other educational personnel in private schools.

(b) An agency or consortium of those agencies shall use funds under a listed program to meet the special educational needs of participating children who attend a private school and their teachers or other educational personnel, but may not use those funds for—

(1) The needs of the private school; or

(2) The general needs of children and their teachers or other educational personnel in the private school.

(Authority: 20 U.S.C. 8893)

§ 299.9 What are the requirements concerning property, equipment, and supplies for the benefit of private school children and teachers?

(a) A public agency must keep title to, and exercise continuing administrative control of, all property, equipment, and supplies that the public agency acquires with funds under a covered program for the benefit of eligible private school children and their teachers or other educational personnel.

(b) The public agency may place equipment and supplies in a private school for the period of time needed for the program.

(c) The public agency shall ensure that the equipment and supplies placed in a private school—

(1) Are used only for proper ESEA program purposes; and

(2) Can be removed from the private school without remodeling the private school facility.

(d) The public agency must remove equipment and supplies from a private school if—

(1) The equipment and supplies are no longer needed for ESEA program purposes; or

(2) Removal is necessary to avoid unauthorized use of the equipment or supplies for other than ESEA program purposes.

(e) No funds may be used for repairs, minor remodeling, or construction of private school facilities.

(f) For the purpose of this section, the term public agency includes the agency or consortium of these agencies.

(Authority: 20 U.S.C. 8893)

Subpart F—Complaint Procedures

§ 299.10 What complaint procedures shall an SEA adopt?

(a) *General.* An SEA shall adopt written procedures, consistent with State law, for—

(1) Receiving and resolving any complaint from an organization or individual that the SEA or an agency or consortium of agencies is violating a Federal statute or regulations that apply to a covered program listed in subsection (b) of this section.

(2) Reviewing an appeal from a decision of an agency or consortium of agencies with respect to a complaint; and

(3) Conducting an independent on-site investigation of a complaint if the SEA determines that an on-site investigation is necessary.

(b) *Covered programs.* Programs covered by this subpart are the following:

(1) Part A of Title I (Improving Basic Programs Operated by Local Educational Agencies).

(2) Part B of Title I (Even Start Family Literacy Programs).

(3) Part C of Title I (Migrant Education).

(4) Part D of Title I (Children and Youth Who Are Neglected, Delinquent, or At Risk of Dropping Out).

(5) Title II (Eisenhower Professional Development Program) (other than section 2103 and part C of this title).

(6) Subpart 2 of Part A of Title III (State and Local Programs for School Technology Resources).

(7) Part A of Title IV (Safe and Drug-Free Schools and Communities) (other than section 4114).

(8) Title VI (Innovative Education Program Strategies).

(Authority: 20 U.S.C. 1221e–3(a)(1))

§ 299.11 What are included in the complaint procedures?

An SEA shall include the following in its complaint procedures—

(a) A reasonable time limit after the SEA receives a complaint for resolving the complaint, including a provision for carrying out an independent on-site investigation, if necessary.

(b) An extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint.

(c) The right for the complainant to request the Secretary to review the final decision of the SEA, at the Secretary's discretion.

(Authority: 20 U.S.C. 1221e–3(a)(1))

§ 299.12 How does an organization or individual file a complaint?

An organization or individual may file a written signed complaint with an SEA. The complaint must include—

(a) A statement that the SEA or an agency or consortium of these agencies has violated a requirement of a Federal statute or regulations that apply to the ESEA program; and

(b) The facts on which the statement is based, and the specific requirement violated.

(Authority: 20 U.S.C. 1221e–3(a)(1))

[FR Doc. 96–7098 Filed 3–25–96; 8:45 am]

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Tuesday
March 26, 1996

Part X

Department of Housing and Urban Development

24 CFR Part 51

Regulatory Reinvention; Streamlining of HUD's Environmental Criteria and Standards; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 51

[Docket No. FR–4034–F–01]

RIN 2501–AC22

Regulatory Reinvention; Streamlining of HUD's Environmental Criteria and Standards

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: In an effort to comply with the President's regulatory reform initiative, this final rule streamlines HUD's regulations governing its environmental criteria and standards. Specifically, this rule amends these regulations to eliminate provisions which do not require regulatory codification. The rule also updates the regulations to more accurately reflect current HUD organization and practices. The streamlining amendments made by this final rule will make HUD's environmental criteria clearer and more concise.

EFFECTIVE DATE: April 25, 1996.

FOR FURTHER INFORMATION CONTACT: Richard Broun, Office of Community Viability, Department of Housing and Urban Development, Room 7240, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3297. Hearing- or speech-impaired individuals may access this number by calling the Federal Information Relay Service TTY at 1–800–877–8339. (With the exception of the ''800'' number, these numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, HUD conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved. As part of this review, HUD reexamined its regulations at 24 CFR part 51, which govern HUD's environmental criteria and standards. HUD has determined that several streamlining amendments can be made to part 51.

This final rule removes provisions which do not require regulatory codification. For example, this rule removes most of the substance of § 51.3, which sets forth the responsibility for administering the requirements of 24 CFR part 51. The rule also removes paragraph (a) of § 51.102, which describes the authority to approve projects under part 51, subpart B. This information, while helpful to HUD's clients, will more appropriately be provided through Federal Register notice. Accordingly, Appendix I to this rule identifies the HUD officials with responsibility for administering the requirements of part 51 and their specific duties. HUD will update this appendix as necessary.

This final rule also updates part 51 to more accurately reflect current HUD organization and practices. For example, paragraph (a)(3) of § 51.101 sets forth HUD's policy for support of construction of new noise sensitive uses. This paragraph states that the ''policy does not apply to * * * any action or emergency assistance under disaster emergency programs.'' The provision originally applied to FEMA programs, which are no longer under HUD jurisdiction. This final rule updates paragraph (a)(3) of § 51.101 to apply this exclusion more generally to other emergency actions, such as those performed under HUD's CDBG and HOME programs.

Finally, the rule streamlines 24 CFR part 51 to eliminate unnecessary wordiness. The streamlining amendments made by this final rule will make HUD's environmental criteria clearer and more concise.

II. Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1). In this case, HUD finds that prior public comment is unnecessary.

This rule merely removes provisions which are unnecessarily codified and which HUD will more appropriately set forth through Federal Register notice. The rule also eliminates excessive wordiness and updates the regulations at 24 CFR part 51 to reflect current HUD organization and practices. This final rule does not affect or establish policy.

III. Other Matters

A. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely streamlines and updates regulations to reflect current organization and practices. The rule will have no adverse or disproportionate economic impact on any small entity.

B. 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 of No Significant Impact is available for public inspection during regular business hours in the Office of General Counsel, the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

C. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

D. Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule will not have the potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule.

List of Subjects in 24 CFR Part 51

Environmental protection, Airports, Hazardous substances, Housing standards, Noise control.

Accordingly, 24 CFR part 51 is amended as follows:

PART 51—ENVIRONMENTAL CRITERIA AND STANDARDS

1. The authority citation for 24 CFR part 51 is revised to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

Subpart A—General Provisions

2–3. Section 51.2 is revised to read as follows:

§ 51.2 Authority.

This part implements the Department's responsibilities under: The National Housing Act (12 U.S.C. 1701 *et seq.*); sec. 2 of the Housing Act of 1949 (42 U.S.C. 1441); secs. 2 and 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3531 and 3535(d)); the National Environmental Policy Act of 1969 (42 U.S.C. 4321); and the other statutes that are referred to in this part.

4. Section 51.3 is revised to read as follows:

§ 51.3 Responsibilities.

The Assistant Secretary for Community Planning and Development is responsible for administering HUD's environmental criteria and standards as set forth in this part. The Assistant Secretary for Community Planning and Development may be assisted by HUD officials in implementing the responsibilities established by this part. HUD will identify these HUD officials and their specific responsibilities through Federal Register notice.

§ 51.5 [Removed]

5. Section 51.5 is removed.

Subpart B—Noise Abatement and Control

6. Section 51.100 is amended by revising the introductory text of paragraph (a) and revising paragraph (b) to read as follows:

§ 51.100 Purpose and authority.

(a) It is the purpose of this subpart B to:

* * * * *

(b) *Authority.* Specific authorities for noise abatement and control are contained in the Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*); and the General Services Administration, Federal Management Circular 75–2; *Compatible Land Uses at Federal Airfields.*

7. Section 51.101 is amended by:

a. Removing paragraph (a)(1)(iii); and

b. Revising paragraphs (a)(1) introductory text, (a)(1)(ii), (a)(2), and (a)(3) to read as follows:

§ 51.101 General policy.

(a) * * *

(1) *Planning assistance.* HUD requires that grantees give adequate consideration to noise exposures and sources of noise as an integral part of the urban environment when HUD assistance is provided for planning purposes, as follows:

* * * * *

(ii) Applicants shall take into consideration HUD environmental standards impacting the use of land.

(2) *Activities subject to 24 CFR part 58.* (i) Responsible entities under 24 CFR part 58 must take into consideration the noise criteria and standards in the environmental review process and consider ameliorative actions when noise sensitive land development is proposed in noise exposed areas. Responsible entities shall address deviations from the standards in their environmental reviews as required in 24 CFR part 58.

(ii) Where activities are planned in a noisy area, and HUD assistance is contemplated later for housing and/or other noise sensitive activities, the responsible entity risks denial of the HUD assistance unless the HUD standards are met.

(3) *HUD support for new construction.* HUD assistance for the construction of new noise sensitive uses is prohibited generally for projects with unacceptable noise exposures and is discouraged for projects with normally unacceptable noise exposure. (Standards of acceptability are contained in § 51.103(c).) This policy applies to all HUD programs providing assistance, subsidy or insurance for housing, manufactured home parks, nursing homes, hospitals, and all programs providing assistance or insurance for land development, redevelopment or any other provision of facilities and services which are directed to making land available for housing or noise sensitive development. The policy does not apply to research demonstration projects which do not result in new construction or reconstruction, flood insurance, interstate land sales egistration, or any action or emergency assistance under disaster assistance provisions or appropriations which are provided to save lives, protect property, protect public health and safety, remove debris and wreckage, or assistance that has the effect of restoring facilities substantially as they existed prior to the disaster.

* * * * *

8. Section 51.102 is amended by:

a. Removing paragraphs (a) and (d);

b. Redesignating paragraphs (b), (c), and (e) as paragraphs (a), (b), and (c), respectively;

c. Revising the introductory text of newly designated paragraph (b); and

d. Revising newly designated paragraph (c) to read as follows:

§ 51.102 Responsibilities.

* * * * *

(b) *Notice to applicants.* At the earliest possible stage, HUD program staff shall:

* * * * *

(c) *Interdepartmental coordination.* HUD shall foster appropriate coordination between field offices and other departments and agencies, particularly the Environmental Protection Agency, the Department of Transportation, Department of Defense representatives, and the Department of Veterans Affairs. HUD staff shall utilize the acceptability standards in commenting on the prospective impacts of transportation facilities and other noise generators in the Environmental Impact Statement review process.

9. Section 51.104 is amended by:

a. Removing paragraph (a)(1);

b. Redesignating the introductory text to paragraph (a) as paragraph (a)(1);

c. Revising paragraph (a)(2); and

d. Revising the introductory text of paragraph (b) and paragraphs (b)(1)(ii) and (b)(2) to read as follows:

§ 51.104 Special requirements.

(a) * * *

(2) *Normally unacceptable noise zones and unacceptable noise zones.* Approvals in Normally Unacceptable Noise Zones require a minimum of 5 decibels additional sound attenuation for buildings having noise-sensitive uses if the day-night average sound level is greater than 65 decibels but does not exceed 70 decibels, or a minimum of 10 decibels of additional sound attenuation if the day-night average sound level is greater than 70 decibels but does not exceed 75 decibels. Noise attenuation measures in Unacceptable Noise Zones require the approval of the Assistant Secretary for Community Planning and Development, or the Certifying Officer for activities subject to 24 CFR part 58. (See § 51.104(b)(2).)

(b) *Environmental review requirements.* Environmental reviews shall be conducted pursuant to the requirements of 24 CFR parts 50 and 58, as applicable, or other environmental regulations issued by the Department. These requirements are hereby modified for all projects proposed in the Normally Unacceptable and Unacceptable noise exposure zones as follows:

(1) * * *

(ii) When an EIS is required, the concurrence of the Program Assistant Secretary is also required before a project can be approved. For the purposes of this paragraph, an area will be considered as largely undeveloped unless the area within a 2-mile radius of

the project boundary is more than 50 percent developed for urban uses and infrastructure (particularly water and sewers) is available and has capacity to serve the project.

* * * * *

(2) *Unacceptable noise zone.* An EIS is required prior to the approval of projects with unacceptable noise exposure. Projects in or partially in an Unacceptable Noise Zone shall be submitted to the Assistant Secretary for Community Planning and Development, or the Certifying Officer for activities subject to 24 CFR part 58, for approval. The Assistant Secretary or the Certifying Officer may waive the EIS requirement in cases where noise is the only environmental issue and no outdoor noise sensitive activity will take place on the site. In such cases, an environmental review shall be made pursuant to the requirements of 24 CFR parts 50 or 58, as appropriate.

10. Section 51.105 is amended by revising paragraph (a)(1) to read as follows:

§ 51.105 Exceptions.

(a) * * *

(1) The project does not require an Environmental Impact Statement under provisions of § 51.104(b)(1) and noise is the only environmental issue.

* * * * *

11. Section 51.106 is amended by revising paragraph (a)(4) introductory text to read as follows:

§ 51.106 Implementation.

(a) * * *

(4) *Use of areawide acoustical data.* HUD encourages the preparation and use of areawide acoustical information, such as noise contours for airports. Where such new or revised contours become available for airports (civil or military) and military installations they shall first be referred to the HUD State Office (Environmental Officer) for review, evaluation and decision on appropriateness for use by HUD. The HUD State Office shall submit revised contours to the Assistant Secretary for Community Planning and Development for review, evaluation and decision whenever the area affected is changed by 20 percent or more, or whenever it is determined that the new contours will have a significant effect on HUD programs, or whenever the contours are not provided in a methodology acceptable under § 51.106(a)(1) or in other cases where the HUD State Office determines that Headquarters review is warranted. For other areawide acoustical data, review is required only where existing areawide data are being utilized and where such data have been changed to reflect changes in the measurement methodology or underlying noise source assumptions. Requests for determination on usage of new or revised areawide data shall include the following:

* * * * *

Subpart C—Siting of HUD-Assisted Projects Near Hazardous Operations Handling Conventional Fuels or Chemicals of an Explosive or Flammable Nature

12. Section 51.200 is amended by revising the introductory text to read as follows:

§ 51.200 Purpose.

The purpose of this subpart C is to:

* * * * *

13. Section 51.201 is amended by revising the definition of ''*Acceptable separation distance (ASD)*'' to read as follows:

§ 51.201 Definitions.

Acceptable separation distance (ASD)—means the distance beyond which the explosion or combustion of a hazard is not likely to cause structures or individuals to be subjected to blast overpressure or thermal radiation flux levels in excess of the safety standards in § 51.203. The ASD is determined by applying the safety standards established by this subpart C to the guidance set forth in HUD Guidebook, ''Siting of HUD-Assisted Projects Near Hazardous Facilities.''

* * * * *

§ 51.202 [Amended]

14. Section 51.202 is amended by removing the first sentence of paragraph (a).

15. Section 51.203 is amended by adding a paragraph (d) to read as follows:

§ 51.203 Safety standards.

* * * * *

(d) Background information on the standards and the logarithmic thermal radiation and blast overpressure charts that provide assistance in determining acceptable separation distances are contained in Appendix II to this subpart C.

16. Section 51.206 is revised to read as follows:

§ 51.206 Implementation.

This subpart C shall be implemented for each proposed HUD-assisted project by the HUD approving official or responsible entity responsible for review of the project. The implementation procedure will be part of the environmental review process in accordance with the procedures set forth in 24 CFR parts 50 and 58.

17. Section 51.207 is revised to read as follows:

§ 51.207 Special circumstances.

The Secretary or the Secretary's designee may, on a case-by-case basis, when circumstances warrant, require the application of this subpart C with respect to a substance not listed in Appendix I to this subpart C that would create thermal or overpressure effect in excess of that listed in § 51.203.

Subpart D—Siting of HUD Assisted Projects in Runway Clear Zones at Civil Airports and Clear Zones and Accident Potential Zones at Military Airfields

§ 51.300 [Amended]

18. Section 51.300 is amended by removing paragraph (a) and removing the paragraph designation of paragraph (b).

19. Section 51.302 is amended by revising the first sentence in paragraph (a) to read as follows:

§ 51.302 Coverage.

(a) These policies apply to HUD programs which provide assistance, subsidy or insurance for construction, land development, community development or redevelopment or any other provision of facilities and services which are designed to make land available for construction. * * *

* * * * *

20. Section 51.303 is amended by revising paragraph (a)(3) to read as follows:

§ 51.303 General policy.

* * * * *

(a) * * *

(3) Special notification requirements for Runway Clear Zones and Clear Zones. In all cases involving HUD assistance, subsidy, or insurance for the purchase or sale of an existing property in a Runway Clear Zone or Clear Zone, HUD (or the responsible entity or recipient under 24 CFR part 58) shall advise the buyer that the property is in a Runway Clear Zone or Clear Zone, what the implications of such a location are, and that there is a possibility that the property may, at a later date, be acquired by the airport operator. The buyer must sign a statement acknowledging receipt of this information.

* * * * *

21. Section 51.304 is revised to read as follows:

§ 51.304 Responsibilities.

(a) The following persons have the authority to approve actions in Accident Potential Zones:

(1) For programs subject to environmental review under 24 CFR part 58: the Certifying Officer of the responsible entity as defined in 24 CFR part 58.

(2) For all other HUD programs: the HUD approving official having approval authority for the project.

(b) The following persons have the authority to approve actions in Runway Clear Zones and Clear Zones:

(1) For programs subject to environmental review under 24 CFR part 58: The Certifying Officer of the responsible entity as defined in 24 CFR part 58.

(2) For all other HUD programs: the Program Assistant Secretary.

Dated: March 7, 1996.

Henry G. Cisneros,

Secretary.

[Note: This appendix will not be codified in title 24 of the CFR.]

Appendix I

Responsibility for Administering HUD's Environmental Criteria and Standards

Section

1. Purpose.
2. General Responsibilities in the Administration of HUD's Environmental Criteria and Standards.
3. Responsibilities in the Administration of HUD's Noise Abatement and Control Standards.

1. Purpose

HUD's environmental criteria and standards are set forth in 24 CFR part 51. The Assistant Secretary for Community Planning and Development is responsible for administering these regulations. However, § 51.3 states that the ''Assistant Secretary * * * may be assisted by HUD officials in implementing the responsibilities established by'' 24 CFR part 51. The purpose of this appendix is to identify these HUD officials and their specific duties.

It is unnecessary to codify this information in title 24 of the Code of Federal Regulations. Providing this information through Federal Register notice will allow HUD to better assist its clients and maintain up-to-date environmental standards. HUD will update this appendix as necessary.

Section 2 of this appendix describes the general responsibilities in administering HUD's environmental criteria and standards. These duties are applicable across-the-board to all the requirements established by 24 CFR part 51. Section 3 of this appendix is more limited in scope and complements the duties described in Section 2. Section 3 sets forth the responsibilities in administering HUD's noise abatement and control standards, which are described in subpart B to 24 CFR part 51.

2. General Responsibilities in the Administration of HUD's Environmental Criteria and Standards

HUD approving officials shall assure that adopted environmental regulations are implemented in relation to program decisions and recommendations. They shall also monitor projects to assure that mitigation measures are implemented.

3. Responsibilities in the Administration of HUD's Noise Abatement and Control Standards

(a) *Authority to approve projects.* (1) HUD approving officials shall make decisions on proposed projects with acceptable noise exposures, including projects where increased noise levels are considered acceptable because of non-acoustic benefits under 24 CFR 51.105(a). HUD approving officials may also approve projects in normally unacceptable noise exposed areas where adequate sound attenuation is provided and where the project does not require an Environmental Impact Statement under 24 CFR 51.104(b).

(2) Other approvals in normally unacceptable noise exposed areas require the concurrence of the Program Assistant Secretary.

(3) Requests for approvals of projects or portions of projects with unacceptable noise exposure shall be referred through the HUD approving official to the Assistant Secretary for Community Planning and Development for approval pursuant to 24 CFR 51.104(b).

(4) In cases where the HUD approving official determines that an important precedent or issue is involved, such cases shall be referred with recommendations to the Assistant Secretary for Community Planning and Development.

(b) *Technical assistance.* Technical assistance in the measurement, estimation, interpretation, or prediction of noise exposure is available from the Office of Community Planning and Development and the Office of Policy Development and Research. Field office questions shall be forwarded through the HUD approving official to the Assistant Secretary for Community Planning and Development or his/her designee.

[FR Doc. 96–7062 Filed 3–25–96; 8:45 am]

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Part XI

Department of Transportation

Federal Highway Administration

49 CFR Part 391

Qualifications of Drivers; Vision and Diabetes; Limited Exemptions; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 391

[FHWA Docket No. MC–96–2]

RIN 2125–AD73

Qualification of Drivers; Vision and Diabetes; Limited Exemptions

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA announces a final determination and final rule to allow those drivers currently holding valid waivers from both the vision and diabetes standards contained in the Federal Motor Carrier Safety Regulations (FMCSRs) to continue to operate in interstate commerce after March 31, 1996. This action is directed solely at those drivers who have been granted temporary waivers to participate in either the Federal vision waiver study or the Federal diabetes waiver study, who numbered 2210 and 116, respectively, as of March 1, 1996. The FHWA believes that allowing this special group of drivers to continue to drive after March 31, 1996, is consistent with the public interest and safe operation of commercial motor vehicles (CMV). This action is necessary because the waiver program will be terminated on March 31, 1996, and without this action, the drivers will no longer be qualified to operate in interstate commerce after that date. With this final rule, the FHWA allows these drivers to continue operations, subject to certain operating conditions. This action also includes a technical amendment to relocate an existing provision so that all limited exemptions from driver qualification standards can be found in the same subpart.

EFFECTIVE DATE: This final rule and technical amendment are effective March 31, 1996.

FOR FURTHER INFORMATION CONTACT: The FHWA has established a telephone number to receive inquiries regarding this action. Contact Ann Dulaney at (703) 448–3094. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Section 206(f) of the Motor Carrier Safety Act of 1984 (MCSA), Pub. L. No. 98–554, 98 Stat. 2835 (codified at 49 U.S.C. 31136(e)) allows the Secretary of Transportation to issue waivers from the Federal Motor Carrier Safety Regulations only after a determination that such waivers are consistent with the public interest and the safe operation of CMVs. The safety performance data collected under the vision and diabetes waiver programs were used as the basis for this determination. Historically, the FHWA has issued limited waivers and does not intend to enter into any large scale program of exemptions. A separate research effort would form the basis for any future adjustments, if warranted, to the current vision and diabetes standards.

Vision Waiver Program Background

The FHWA announced its vision waiver study in a notice of final disposition on July 16, 1992 (57 FR 31458). The intent of the program was to obtain valuable information on the relationship between visual capacity [1] and the ability to operate a CMV safely. This vision waiver study program was initiated as part of an overall regulatory review of the medical qualification standards applicable to interstate CMV drivers. For a complete description of the waiver program, see the FHWA's October 6, 1994, notice of determination; request for comments, at 59 FR 50887.

A. Court Decision

On August 2, 1994, the U.S. Court of Appeals for the D.C. Circuit found that the agency's determination that the waiver program will not adversely affect the safe operation of CMVs lacked empirical support in the record and accordingly, the court found that the FHWA failed to meet the exacting requirements of section 2505(f) (now 49 U.S.C. 31136(e)). *Advocates for Highway and Auto Safety* v. *FHWA*, 28 F.3d 1288, 1294. Consequently, the Court concluded that the FHWA's adoption of the waiver program was contrary to law, and vacated and remanded the rule to the agency.

B. Proceedings After the Court Decision

On November 17, 1994, the FHWA published a notice of final determination in the Federal Register (59 FR 59386) extending the validity of the vision waivers through March 31, 1996. The FHWA's decision was based, in part, on data collected on the group of waived drivers indicating that they had performed and continued to perform more safely than drivers in the general population of commercial drivers. The notice announced plans to develop and impose more stringent performance conditions to further reduce safety risks to the waived drivers and highway users. For more complete information on the FHWA's actions after the court decision, see 59 FR 50887 (October 6, 1994) and 61 FR 606 (January 8,1996).

Diabetes Waiver Program Background

On July 29, 1993, the FHWA published in the Federal Register a notice of final disposition allowing certain insulin-using diabetic drivers to operate CMVs in interstate commerce for a 3-year period. The purpose of the waiver study program was to collect data on the driving experience of a group of insulin-using drivers and use that information to support amending, if warranted, the current diabetes requirement.[2] Approximately 140 drivers were accepted into the diabetes waiver program. For a complete description of the diabetes waiver program, see 57 FR 48011 (October 11, 1992) and 58 FR 40690 (July 29, 1993).

The August 2, 1994, court decision in *Advocates* called into question the FHWA's ability to issue waivers to insulin-treated diabetic drivers because of the similar approach used to pre-qualify drivers for participation in the diabetes waiver program.

Accordingly, the FHWA notified the diabetes waiver drivers, in separate mailings on March 28, 1995, of the court's decision and changes to the Vision and Diabetes Waiver Programs that allowed both programs to continue until March 31, 1996. The FHWA established stricter performance conditions for all participants, and enhanced the FHWA's monitoring of the performance of the waived drivers in order to ensure compliance with the statutory test as construed by the court.

Comments

The FHWA has received over 960 separate comments to the docket in response to the January 8, 1996, notice of proposed rulemaking (NPRM). The majority of comments were from drivers in the waiver programs, their families, and employers, all of whom favored the FHWA's proposal to allow waived drivers in the vision and diabetes waiver programs to continue driving in interstate commerce after March 31,

[1] The current Federal vision standard for CMV drivers requires: distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70 degrees in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber. 49 CFR 391.41(b)(10).

[2] The Federal diabetes standard for CMV drivers requires no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control. 49 CFR 391.41(b)(3).

1996. Their comments addressed their safe driving records and the significant economic and emotional hardships that would likely befall them without the relief proposed in the NPRM. Other commenters in favor of the proposal include the National Private Truck Council (NPTC), the Owner- Operator Independent Drivers Association (OOIDA), the American Association of Motor Vehicle Administrators (AAMVA), the State of Utah Department of Public Safety, the U.S. Equal Employment Opportunity Commission (EEOC), the Disabilities Law Project, the American Optometric Association (AOA), Eglis K. Bogdanovics, M.D., the International Brotherhood of Teamsters, Teamsters, Chauffeurs, Warehousemen and Helpers (Local Union No. 110), Teamsters ''General'' (Local Union No. 200), the International Union of Operating Engineers (IUOE) and the Institute for Public Representation of the Georgetown University Law Center.

While the majority of the commenters supported the NPRM as proposed, some supported it with slight modifications. Some of the waived drivers believed that the required medical monitoring, especially the requirement for an annual physical examination pursuant to § 391.43, instead of every 2 years as is required of other drivers, was burdensome, expensive and unnecessary. One supporter believed that the proposed level of medical monitoring was insufficient and made recommendations for additional monitoring. Other supporters of the NPRM contended that the FHWA's proposal did not go far enough and urged the FHWA to extend its proposed grandfathering rights to other similarly qualified drivers who were not currently participating in the waiver programs and/or to amend its physical qualification standards to allow individual determination of the ability to drive, rather than blanket exclusions.

Phillips Petroleum Company supported the proposal for drivers currently holding vision waivers, but opposed it for those drivers holding diabetes waivers, stating that the insulin-using diabetic drivers pose a higher medical risk with potentially disastrous consequences. The American Trucking Associations (ATA) supported a ''case-by case review that considered the merits of individual waived drivers,'' but opposed the broad issuance of waivers stating that the ''analysis doesn't justify grandfathering all waived drivers.''

Four commenters, the Advocates for Highway and Auto Safety (AHAS), the Insurance Institute for Highway Safety (IIHS), Philip A. Shelton, M.D., and Mr. Bernard Gustavsen, one of the waived drivers, opposed the NPRM. The comments of the AHAS and IIHS addressed the reliability and accuracy of the FHWA's risk assessment, use of the General Estimate System [3] (GES) as a comparison group, existing scientific evidence of the increased crash risk of drivers with diabetes and vision-impairments and other factors which, they contend, support their position that the FHWA should not grant grandfather rights to the drivers holding a valid Federal vision or diabetes waiver on March 31, 1996. Dr. Shelton, chairman of the Medical Advisory Board of the Department of Motor Vehicles of the State of Connecticut, believed that the FHWA's NPRM, as proposed, was without merit and created a privileged class of drivers. Mr. Gustavsen stated that he opposed the waiver program and believed that all rules and regulations prior to the waiver should remain enforced and be carried out to the fullest degree; however, it is not clear whether Mr. Gustavsen understands that, without his waiver of the current vision standard or grandfather rights after March 31, 1996, he would not qualify to operate a CMV in interstate commerce.

These comments are more fully discussed below.

Discussion of the Comments

A. In Favor

The Disabilities Law Project, a non-profit law firm representing individuals with disabilities including several waived drivers, believed that unsafe drivers have been effectively screened out of the waiver program and that the good driving performance of these remaining drivers as well as the proposed medical monitoring requirements will ensure the continued safe driving of this group of drivers. Furthermore, this firm believes that the FHWA's proposed actions are ''consistent with national policy as expressed in the Rehabilitation Act of 1973 and the Americans with Disabilities Act to facilitate the employment of qualified individuals with disabilities.''

The NPTC, a national association representing more than 1100 companies that utilize proprietary trucks in their business activities, believed the FHWA's proposal will be an important step in the FHWA's overall efforts to establish performance-based standards. It cited the drivers safe driving performance and emphasized the need to continue the medical monitoring. The NPTC believed ''the conditions FHWA has put into place will effectively screen out any unsafe drivers and safeguard the operation of CMVs.''

Egils K. Bogdanovics, M.D., a practicing endocrinologist and board member of the American Diabetes Association (Connecticut Affiliate) commented as a member of the Medical Advisory Board of the Department of Motor Vehicles of the State of Connecticut in support of the NPRM. Dr. Bogdanovics stated that he was not surprised by the safe performance of the diabetes drivers, and cited the waiver program data to support his belief that motivated insulin-treated diabetics can ''scrupulously avoid hypoglycemia'' and operate CMVs safely.

The AOA strongly supported the FHWA's proposal to allow the drivers in the vision waiver program to continue operating CMVs in interstate commerce after March 31,1996; however, they were silent on whether waived drivers in the diabetes program should be allowed to continue driving. The AOA believed that an examination by an ophthalmologist or optometrist as part of the medical requirements for operating under the proposed grandfather provision was appropriate.

The AAMVA commented in support of the NPRM, but expressed some reservations concerning the drivers in the diabetes waiver program. Specifically, AAMVA was concerned about the potential effects of hypoglycemia on CMV drivers. The American Diabetes Association, in earlier comments to FHWA docket MC–87–17, noted that mild hypoglycemia resulting in minor cognitive effects is not an immediately threatening emergency, although it should be addressed immediately by ingesting glucose. The FHWA believes that such ingestion can occur quickly and without stopping the vehicle. Therefore, it is requiring that the diabetic drivers carry a source of rapidly absorbable glucose while driving. Individuals with severe hypoglycemic reactions or hypoglycemic unawareness were excluded from participating in the program. The FHWA believes that today's medical technology for screening individuals for severe hypoglycemia and the proposed medical monitoring requirements, including an annual examination by a endocrinologist, ensure that such individuals will be detected and removed from the pool of diabetic drivers operating under § 391.64.

The OOIDA, a national trade association representing the interests of

[3] The GES is a national survey conducted by the National Highway Traffic Safety Administration and was selected for use as the best measure of the prevailing national norm relative to large truck accidents.

a large number of independent owner-operators and professional drivers at both the Federal and State level, urged the FHWA to allow the waived drivers to continue to operate in interstate commerce, stating that the drivers ''have earned the privilege .... as evidenced by their safety record.'' The OOIDA also believed that the medical monitoring requirements were sound and that the affected drivers would not object to these requirements in order to continue driving after March 31,1996.

The IBT, IUOE, and the EEOC, like OOIDA, supported the FHWA's proposal to allow the waived drivers to operate in interstate commerce after March 31, 1996, but they also urged the FHWA to move beyond this proposed action and change the physical qualification requirements to allow individual assessments of a driver's ability to safely operate a CMV in interstate commerce. They cited the good driving performance of the waived drivers and, therefore, concluded that the drivers were not a high risk group.

Comments in the form of a legal brief were filed on behalf of two self-employed interstate truck drivers by the Institute for Public Representation of the Georgetown University Law Center. Both of the drivers are petitioners in the United States Court of Appeals for the 8th Circuit, appealing the FHWA's decision to deny them waivers from the vision standard. The comments were strongly supportive of the proposed action, but strongly critical of the FHWA's failure to extend the exemption to all other drivers ''identically situated.'' The brief contends that the FHWA has *de facto* amended the standard, and that the two drivers are now qualified under the amended standard.

The FHWA disagrees that these drivers are ''identically situated.'' Since neither has participated in the waiver program, neither has been subject to the same performance standards, reporting requirements and monitoring. The FHWA also disagrees that the standard has been changed, but the agency is continuing its efforts to conduct the research necessary to enable it to make the changes that are indicated when that work is completed. The remaining arguments made in the comments are best left for resolution by the court in the pending litigation.

The FHWA agrees that this group of drivers is not a high risk group and will use their performance data to support allowing them to continue driving after March 31, 1996. However, it does not plan to use this data for any future adjustments to the vision and diabetes standards; nor does the FHWA plan to reopen the waiver programs in light of the Court decision in *Advocates for Highway and Auto Safety* v. *Federal Highway Administration,* (28 F. 3d 1288, D.C. Circuit 1994). The FHWA recognizes that there were weaknesses in the waiver study design and believes that the waiver study has not produced, by itself, sufficient evidence upon which to develop new vision and diabetes standards. The waived group of drivers has perform as well as or better than a similar group drawn from the general population of CMV drivers because of the waiver program preselection criteria and conditions. The FHWA's goal is to adopt driver physical qualification standards that are more performance-oriented; that is, more reflective of the actual physical requirements that foster safe operation of commercial vehicles. Therefore, the FHWA has undertaken comprehensive research to develop parameters for a more performance-based vision standard for all commercial drivers and has initiated plans to conduct a retrospective study to examine the risk associated with permitting insulin-using diabetic individuals to operate commercial motor vehicles (CMVs).

Many waived drivers who supported the proposal stated that the requirement for an annual physical qualification examination and certification, instead of every two years as required for other drivers, will be burdensome to drivers both financially and in terms of time off from work to get the examination. Other waived drivers believed that any further monitoring of their physical condition beyond the current requirements for drivers operating in interstate commerce is unwarranted for the above stated reasons and because their good driving performance proves that they are not a high risk group.

The FHWA has determined that the requirements for an annual physical qualification examination pursuant to § 391.43 and annual medical examinations by ophthalmologist or optometrist and endocrinologists are not overly burdensome in light of the facts that this group of drivers has physical conditions that would otherwise disqualify them from interstate operations pursuant to § 391.41(b)(10) and § 391.41(b)(3) of the FMCSRs and that an individual's medical or physical condition may deteriorate over time. In fact, some drivers' waivers were canceled because the disqualifying condition for which they were waived had worsened or they had developed other medical problems or conditions that caused them to be otherwise unqualified pursuant to § 391.41. Therefore, the FHWA will require the annual physical qualification examination and certification in addition to an annual eye examination for the vision impaired drivers and an annual examination by an endocrinologist for diabetic drivers as an extra precaution to ensure the continued safe operation of these drivers.

The ATA, a national trade association representing the trucking industry, commented in opposition to the broad issuance of waivers, but stated it would support a case-by-case evaluation that considered the merits of individual waived drivers. Notwithstanding the safe performance of the drivers in the waiver program, the FHWA's decision to allow this group of vision and diabetes waived drivers to operate CMVs in interstate commerce has been and continues to be based on the individual assessment of each driver's compliance with the waiver program conditions, including driving performance and medical requirements. Initially, to determine eligibility for participation in the waiver programs, individual determinations were made on the basis of complete data submitted. Each driver's application was individually examined, any missing information was required to be furnished, and each driver was measured against the waiver standards to assure that all the conditions were met. Recognizing that this group of waived drivers could potentially include some subpar drivers who individually would present an unacceptable risk, the FHWA took steps to identify and remove such drivers. The FHWA's monitoring systems, which have been in effect since the inception of the programs, were later enhanced to more promptly identify subpar performers among the waived group to ensure that safety was maintained. The FHWA's periodic verification of the waived drivers' reported accidents and citations through each driver's State motor vehicle record (MVR) was increased to monthly monitoring. Additionally, medical reports from the waived drivers have been reviewed and verified. Therefore, the FHWA has determined that the 2326 drivers in the vision and diabetes waiver programs have individually merited partial exemption from §§ 391.41(b)(10) or 391.41(b)(3).

The ATA commented that the NPRM provided ''too little control'' over the drivers in the waiver programs. It suggested that the FHWA should augment its proposed monitoring program by requiring (1) Copies of the annual physical qualification examination and certification pursuant

to § 391.43 and the medical examinations by the appropriate medical specialists be sent directly to the FHWA to be included in a database of waived drivers, (2) that information concerning the driver's activities at the time of an insulin reaction (hypoglycemia) be reported, (3) FHWA notification to each driver 45 days in advance of the expiration of the current physical qualification certificate, and (4) the medical examiner to provide copies of the required certifications to the employer and driver. Although the ATA considered the monitoring conditions for operating under the proposed grandfather provisions to be the foundation for an appropriate monitoring program, the FHWA believes its proposed monitoring program, regarding medical requirements and performance, is an extra precaution that enlarges the current system of safeguards in place for all CMV drivers in the general population. All of the drivers who will be operating under this grandfather provision will be subject to State or Federal enforcement or licensing sanctions and, in most cases, to the penalty provisions of the commercial drivers' license regulations (49 CFR Part 383). Furthermore, the FMCSRs currently require the medical examiner to provide a copy of the medical certificate to the motor carrier. In addition, the FMCSRs do not preclude employing motor carriers, the first level enforcers under the regulatory scheme for the FMCSRs, from imposing additional requirements to ensure that their drivers meet the requirements under § 391.41. Many motor carriers obtain copies of the completed medical examination form to keep on file while others will require certification by a medical examiner of their choice even though the driver has a current medical examiner's certificate. Some employers require both. The provisions in § 391.64 will not preclude motor carriers or other employers from obtaining additional information on employees who will be operating under this grandfather provision.

Furthermore, the FHWA believes that the entire medical determination process can best be delivered through a State-administered program linked to the issuance and renewal of CDLs. After the recent completion of six pilot demonstration programs to verify these States' ability to integrate the medical determination process with the CDL process, the FHWA recommended that this medical transfer to the States be handled through a negotiated rulemaking process to begin sometime in the summer 1996. The FHWA believes that merging the medical determination process with the CDL process will provide further scrutiny of the performance of all commercial drivers. Therefore, the FHWA has determined that the monitoring conditions, as outlined in the NPRM, are more than adequate to ensure the continued safe operation of these drivers when viewed in the framework of the safeguards in place for monitoring all commercial drivers. The proposed monitoring conditions will provide safeguards for employers while not imposing an undue burden on the grandfathered drivers.

The ATA expressed concern over potential changes to the medical certificate as a result of this action and in light of additional changes that may be forthcoming as a result of the FHWA's plans for revising the medical examination form. Although the FHWA finds it necessary to change the medical certificate to verify that a driver is qualified to operate a CMV by operation under § 391.64, the FHWA is sensitive to ATA's concerns regarding an adequate lead time for informational changes to forms and to the ATA's economic concerns as a result of having to discard large inventories of current forms. Therefore, the FHWA will allow the current medical certificate form to be used until existing stocks are exhausted or until one year from the effective date of the change, whichever comes first, provided that medical examiners using existing forms make appropriate handwritten notations of the required information on such forms.

The ATA's comments included a recommendation for a final report on the FHWA's waiver programs. The FHWA will prepare a final report of its efforts in this area and will give consideration to the ATA's suggestions for information to be addressed in the report. The report will be placed in the docket.

The ATA raised several issues concerning the risk assessment used by the FHWA to justify granting grandfather rights to the waived drivers after March 31, 1996. We believe that the ATA comments contain a misunderstanding of the data presented in the Risk Assessment Report. It stated that ''in assessing the accident rate of drivers in the vision waiver program, it is reported that their rate was below that of the general commercial vehicle driver population except for the period January to June 1994.'' The ATA is erroneously combining statements from two different tables. The NPRM did state that the accident rates of these drivers were below that of the general commercial vehicle driver population rate. That statement applied to Tables 1 and 2 in the Risk Assessment Report which reported the rates for cumulative periods of time from the beginning of the program. The accident rate given for January to June 1994 (Table 4) was presented in the context of data to be used for a trend analysis of independent time periods and no comparison was made for that data relative to the general driver population. The statement of the higher rate for that period was made in the context that it represented a departure from the accident trend across time. Even with this departure, the overall accident trend was not increasing and, in fact, showed a decreasing trend.

The ATA also stated that there was a failure to analyze the accident experience of the drivers in the two groups, vision and diabetes, in the same manner. It is true that the accident rates of the two groups were viewed in a different manner relative to the national rate, but this was done because the numbers of drivers in the two groups were so disparate (over 2,000 in the vision group versus slightly more than 100 in the diabetes group) that the same method of analysis could not appropriately be used for both. In the vision group, confidence intervals were used to relate that group's accident rate to the national rate. This was done because the number of drivers was of sufficient size that the error of estimate for the accident rate would not be so large as to allow the rate to get too much above the national rate before safety concerns were alerted. Conversely, the small numbers in the diabetes group provide an error of estimate for their accident rate which is larger and, as a result, it was determined that the actual rate without confidence intervals would be compared to the national rate. When the diabetes group's rate became larger than the national rate, a more detailed scrutiny of the drivers was made. If the lower level of the confidence interval for the vision group's rate had become larger than the national rate, a similar type of scrutiny would have been done for that group. An overall approach of this type is accepted practice to protect patients in clinical trials that investigate the therapeutic use of pharmaceutical products.

The ATA and the AAMVA commented on the proposed requirement that the endocrinologist certify that the driver is free of insulin reactions (less than one documented, symptomatic hypoglycemic reaction per month). The AAMVA misinterpreted this requirement concerning hypoglycemia to mean that one hypoglycemic reaction per month

would be allowed, including severe hypoglycemic reactions. This was not the FHWA's intent. The FHWA continues to believe that individuals with severe hypoglycemia and hypoglycemia unawareness should be excluded from operating CMVs. At the same time, the FHWA believes that mild hypoglycemia is not an immediately threatening emergency, although it must be addressed within a few minutes by ingesting glucose. The reference, ''less than one documented, symptomatic hypoglycemic reaction per month,'' was intended to provide guidelines to the endocrinologist and medical examiner for evaluating the status of the driver's diabetic condition for the preceding 12 months. This reference was included because the FHWA was anticipating the question, '' What is meant by free of insulin reactions?'' To clarify this issue, the FHWA believes that an individual is free of insulin reactions if he or she does not have severe hypoglycemia (i.e., episodes of altered consciousness requiring the assistance of another person to regain control) or hypoglycemia unawareness (i.e., the inability to recognize the early symptoms of hypoglycemia), and has less than one documented, symptomatic hypoglycemic reaction per month. Any one episode or a series of documented, symptomatic hypoglycemia reactions should be evaluated in terms of the individual's overall diabetic condition, and whether the individual, as a result of such reactions, is likely to experience any diminution in driving ability. The FHWA believes that the more frequent medical evaluation and self-monitoring requirements for operating under § 391.64 will ensure that the drivers operating under this grandfather provision who develop severe hypoglycemia or hypoglycemia unawareness will be identified and promptly removed from the pool of drivers.

B. In Opposition

The AHAS voiced strong opposition to the FHWA proposal to grant grandfather rights to the drivers in the vision and diabetes waiver program after March 21, 1996. In addition to rearguing the position it took in the court proceedings, the AHAS criticized the proposal to grandfather these drivers asserting that the FHWA relied on a monitoring program that it characterized as lacking precision and containing inaccuracies and inconsistencies. The AHAS stated that the comparison of Table 1 and Table 2 in the FHWA Risk Assessment (October 12, 1995) shows a number of incongruities and that it is difficult to perform cross-table comparisons.

These two tables in the Assessment were not intended to be compared. As is stated in the text of the assessment (page 2), Table 1 is a compilation of data presented in the various monitoring reports developed throughout the course of the program. The rates presented in that table represent all drivers who were in the program at the time of the particular monitoring report. Table 2, on the other hand, is a re-examination of the accident data for only those drivers who are still in the program as of October 1995 (as was stated in the text). Given that this is a re-examination of those drivers in October 1995, it is possible to retrospectively restructure the dates of accident rate presentation with information available at that later date. Since the tables were not intended for comparison, given that they are based on different sets of drivers at different time periods with different retrospective perspectives, the appearance of apparent incongruities is not surprising. This misapplication is, unfortunately, exacerbated by some typographical errors. In Table 1, the National Accident Rate for the June 1994 comparison should be 2.400 instead of 2.422. In addition, in Table 2, the year of the national accident rate for the June 1994 comparison should be 1992 rather than 1993.

Other apparent inconsistencies identified by AHAS are explained on the basis of how data are reported to GES and to the waiver program. For example, the AHAS stated that the national accident rate used for June 1993 (the 1991 rate of 2.13) is different from that used just two months later for August 1993 (the 1992 rate of 2.40). The use of different rates is related to the availability of data from GES. The results of the GES data acquisition process for any year usually become available in late summer or early fall for the subsequent year. The 1992 GES data were not available in June 1993 but became available by August 1993.

The AHAS also pointed out that, for June 1994, the smaller number of drivers in Table 2 had a larger number of accidents (293) than the number of drivers in Table 1 for that date (292). This is explained by the nature of delays in reporting. The accidents reported in June 1994 in Table 1 are for the complete reporting period prior to that date. The data reported in Table 2 is taken from complete data reported as of October 1995.

The AHAS has also observed that the drivers remaining in the program (Table 2) have persistently higher accident rates than those shown when the program had fuller participation. The fuller program data presented in the past contains drivers whose waivers were subsequently revoked for a variety of reasons, only one of which was prompted by the driver having an accident with a citation. Having an accident with a citation is a relatively rare event, and the preponderance of revocations occurs for reporting problems, such as failure to report medical evaluations, mileage, violations, and other required data. When these individuals are removed from the program, their vehicle miles traveled (VMT) are also removed from reports but, unless they also had accidents, there is no reduction in the overall number of accidents reported. Therefore, the accident rates per million VMT will naturally increase. Even with this increase, however, the accident rates of those remaining in the vision waiver group are still considerably lower than the national rate.

The AHAS has made several statements alluding to the inadequacy of the study design in the diabetes waiver program. The AHAS claimed that the inadequacies of the design undermine the ability of the FHWA to draw inferences from the results. The AHAS' understanding of the activities surrounding the diabetes waiver is inaccurate. The FHWA is *not* presently conducting a study to generalize the feasibility of issuing waivers to diabetic drivers. No inferences about a waiver program will be drawn from these results. No research study has been in place since the U.S. Court of Appeals' decision, cited above, regarding the waiver programs. Since that time, the program has focused on the monitoring of the drivers. This means that the procedures of inferential research do not apply in this circumstance. In its place, monitoring is conducted on multiple levels: in group monitoring to compare the waived drivers' accident rates to the national accident rate as a warning device, and thereafter, on a case-by-case basis if the group monitoring indicates this is necessary.

Since the FHWA changed the focus of the waiver program, the AHAS's comments concerning the study design have been resolved. For example, given that no inference is drawn, the size of the sample is irrelevant. Also, when the FHWA detects that the group accident rate in a monitoring report exceeds the national rate, it is not contrary to study methodology to use a case-by-case review, because the monitoring effort is not a study. Moving to a case review is a prudent step in the monitoring process. It is the same process as that

used in clinical trials to protect patient safety.

The AHAS stated that the conduct of case reviews is not a valid means of conducting statistical analysis. In the context explained above, this claim is clearly not relevant since the focus of the data presentation in the diabetes monitoring report was comparative and not a statistical analysis with such facets as confidence intervals.

The AHAS also stated that case-by-case evaluations are entirely subjective since they are not based on such methods as accident reconstruction. The contrast offered here is hardly valid because accident reconstruction also has subjective components and is therefore not entirely objective. In like manner, the case level analysis conducted by the FHWA is not entirely subjective. The analysis at that level seeks to determine if the reporting police officer has issued a citation indicating that the driver may be at fault. The analysis also examines the accident report to detect if there is any evidence of driving behavior that could potentially indicate a hypoglycemic event, such as crossing the median, swerving, or driving off the road. In the cases where medical attention is given to the waivered driver, reports on glucose levels are obtained. Therefore, both methods involved some analytical decision making based on evidence.

The AHAS stated that the FHWA does not review GES data to eliminate accidents in which the truck driver was at fault. It is true that the FHWA did not do this, however, the FHWA did not compare the at-fault accident rate of the diabetic group to the GES data. A comparison was made for accidents when one vehicle was towed from the scene. This rate for the diabetes group was 0.783. It was pointed out by the Insurance Institute for Highway Safety that the rate should be compared with the national rate for tow away accidents, which was estimated by the University of Michigan's Transportation Research Institute (UMTRI) to be 0.911. In this case, the diabetes group's rate is lower than the national rate (0.783 vs 0.911).

The AHAS stated that there is a problem in the reporting process which involves a lag-time in revealing accidents in the diabetes waiver program. The FHWA recognizes that there is a lag in reporting accidents in the monitoring report, but notes that there is no lag in examining accidents as they are reported to the FHWA. The lag in reporting in the monitoring report is due to the delay in the reporting of vehicle miles traveled. Since the initial focus of the monitoring report is to compare the group accident rate to the national rate, it is necessary to have complete mileage data to construct the group accident rate. The accidents that are combined with relevant mileage must be from the same period of time, and mileage data reports lag behind the accident reports. Accidents must be reported within 15 days of their occurrence. Since accidents occur at random times, it is not possible to have mileage reported concurrently with accidents. However, since the accidents are usually reported first, they are examined to determine if action should be taken relative to a particular accident.

The AHAS commented on its previous objection to the diabetes waiver program that pointed out the safety dangers inherent in a plan that relies on close monitoring. The FHWA is aware that an individual under close or tight control has a greater propensity for episodes of hypoglycemia than an individual under less rigid control. However, as the FHWA stated in an earlier notice (58 FR 40690), it is not mandating tight control for the drivers who will be operating under § 391.64. As already mentioned, individuals with severe hypoglycemia or hypoglycemia unawareness were excluded from participating in the diabetes waiver study program. Such individuals will continue to be promptly identified, found unqualified, and removed from this pool of drivers by virtue of the more frequent medical evaluation and self-monitoring conditions for operating under § 391.64.

The IIHS, in its comments opposing the FHWA's NPRM, stated that ''evidence continues to mount concerning the increased crash risk of drivers with diabetes.'' To support this, it submitted three studies (Dionne *et al.*, 1995; Koepsell *et al.* 1994; Cox *et al.* 1993) which are addressed below. While these studies are well-performed and their results are clearly defensible, a closer scrutiny suggests that they may not be as conclusive relative to the waiver group as IIHS implies. For example, the Dionne (1995) study seems to show that diabetic drivers of straight trucks have a 2.4 relative risk of accidents when compared to healthy drivers. Taken in isolation, this result is compelling. But viewed in the broader context of the study, it is less conclusive relative to FHWA's waiver program. In particular, this study also examined diabetic drivers of articulated trucks, and there was no significant relative risk for that group. The authors of the study state that it is difficult to explain why diabetic drivers of straight trucks show elevated risk while this result does not hold for articulated trucks. They speculate that the different results may be due to company owners being more rigorous in their selection of drivers for articulated trucks or that the results are due to different levels of disease severity in the two groups of diabetic drivers.

This study does not distinguish between diabetic drivers who are treated with insulin and those who are not. The authors also do not report the number of diabetic drivers in relation to truck type. In addition to not examining the interactive effects of disease severity, the potential moderating effects of other factors (e.g., age and driving behavior) are not analyzed. Thus, while the results are significant in the context of straight trucks, the overall lack of specificity strongly suggests that this outcome is preliminary and not directly applicable to the waiver group.

Koepsell *et al.* (1994) reported that they found more than a two-fold risk of crashes among diabetic drivers who were 65 years of age or older. This would be consistent with the degenerative nature of the disease relative to aging. However, the average age of the drivers in the diabetes waiver group is slightly over 43 with less than one percent (0.85%) 65 or older. That study, therefore, is not directly relevant for the present group of drivers.

Cox *et al.* (1993) reported that in a group of 25 Type I diabetics on a driving simulator, driving performance was significantly disrupted under conditions of moderate hypoglycemia. However, it seems reasonable that these study conditions, i.e. testing conducted under fasting conditions and IV insertions in the arms of individuals being tested, would, in and of themselves, affect overall performance. The limited relevance of these study findings to the drivers in the FHWA waiver programs is best represented by the Cox Study conclusion itself: ''Because we used a simulator, it is not clear to what extent these data can be extrapolated to an individual's actual driving performance.''

Regarding the crash risk of drivers with vision impairments, the IIHS cited the Rogers and Janke study of California heavy vehicle operators with vision impairments. This was a 1987 study conducted at the request of the FHWA. While the study findings for this visually impaired group showed that both their accident and conviction rates, adjusted for age, were significantly and substantially higher than those for visually nonimpaired drivers, the authors concluded that the ''evidence presented could not be considered compelling in substantiating the federal standard, given the lack of good data on

possible exposure differences.'' Although not cited by the IIHS, McKnight *et al.* (1985) concluded in their study of monocular and binocular truck drivers that an individual's style of driving was a more predictive measure of accident involvement than was visual status. They found that monocular drivers showed deficiencies on a number of clinical visual measures, but no differences were found between monocular and binocular drivers in tasks of actual driving performance (i.e., information interpretation, hazard detection, visual search, lane keeping, clearance judgment, and gap judgment).

The IIHS claimed that there are a number of fallacies in the reasoning that lead to the FHWA proposal. As a first fallacy, it claimed that the FHWA's reasoning is based on a relatively clean individual driving record predicting future low crash risk. The IIHS indicated that this reasoning is faulty because a study of crashes in California showed that two-thirds of the crashes in one year involved drivers who had no accidents in the preceding three years.

Although this is a cogent result for individual drivers, it is not reflective of the analysis conducted by the FHWA in making the determination to grandfather this group of drivers. The FHWA has determined that the current group, and only this group of drivers, as a group, does not present an increased risk on the road. That is, individuals may have unpredictable variability in accident behavior across time but groups are not necessarily that labile. Groups can have stable behavior over time when (1) preselected and (2) closely monitored. The FHWA believes that by examining individuals in this group, over the past three years, relative to a number of responsible behaviors, the surviving group has stable behavior relative to a total accident rate, a rate that is consistently lower than the national rate. Moreover, when the accident rates of the drivers to be grandfathered were examined in six-month periods, a significant decreasing trend (page 5, Risk Assessment) was observed. Hence, while the prediction of individual crash behavior is problematic, the fact that this group has a lower accident rate than the national rates with a significantly decreasing trend strongly support the FHWA's determination that they will not present increased risk by driving on the nation's roads, while being monitored.

Furthermore, the insurance industry continues to follow a practice of setting insurance rates based on accident and conviction information that becomes available to them, indicating by industry practice that they believe a pattern of convictions and/or accidents does indicate a higher risk of a future accident. Of course, the converse is more appropriate, i.e., the absence of convictions and/or accidents indicates a lower risk of a future accident—the so called ''safe driver'' in insurance premium-setting parlance. This is consistent with the findings of the many studies cited in the Notice of Final Determination of November 17, 1994 (59 FR 59386) which support the principle that past behavior, in terms of accidents and convictions, is still the best predictor of future performance. Thus the FHWA believes that in determining the relative risk of this group of waived drivers, the same information being used by the insurance industry is a valid measure that should be applied in making this decision regarding relative performance of the drivers in this study versus the pool of all drivers.

The IHS also claimed that GES is an inappropriate comparison group. It stated that this has been noted by FHWA's consultant, Dr. Thomas Songer, who pointed out that such factors as age and driving patterns cannot be controlled in this manner of comparison. It is true that ancillary factors cannot be controlled through a comparison with GES, but the FHWA believes that this type of control is not of primary interest in this situation where the decision involves safety on the roads in general. For example, a study in which a control group is selected, even randomly, and matched to the study group has as its intent the achievement of internal validity in the comparison. But, as is being increasingly pointed out in medical research where randomized trials are the basis of good science, these controlled studies which do not specifically address external validity have this as the chief potential weakness with their results (U.S. General Accounting Office, ''Cross Design Synthesis; A New Strategy for Medical Effectiveness Research,'' March 1992, GAO/PEMD–92–18). It is believed that external validity is of primary concern in the decision to allow this group of drivers to continue in their professions and, as a result, GES is the best focus for this validity.

Another fallacy alleged by the IIHS involves the FHWA's statement that most waivered drivers are not at fault in their crash involvement. It stated that the problem concerns the subjective nature of fault determination. The IIHS is correct in this finding and in its claim that a waivered driver, while not at fault, could have an impaired ability to react quickly. However, the IIHS' claim is not germane here, given the behavior of the vision waiver group. Their accident rate, even with the foregoing possibility, is still lower than the national rate.

The IIHS is correct in its assertion that the FHWA has improperly characterized the GES data. The FHWA was incorrect to state that accidents are not included in GES unless one vehicle was towed from the accident scene. The diabetes waiver group accident rate of .783 under towed vehicle condition should not have been compared to the national rate of 2.39. The IIHS was correct in stating that the 0.783 rate should have been compared to the more appropriate rate (towaway crashes) calculated by UMTRI which was 0.911. However, 0.783 is still smaller than 0.911 and the rate ratio involving these two .783/.911=.859) is less than one. For this particular group of drivers, this piece of evidence suggests they are certainly not less safe than the average CMV driver.

The IIHS stated that a limitation of the program was the methods used to ascertain crash involvement and traffic violation citations. The IIHS stated that self-reporting of crashes and violations is problematic and the primary source of verification, motor vehicle records, is less than complete. It is true that self-reporting can be problematic and requires some form of verification. At present, the FHWA verifies the waivered drivers' accident and violation reports in three ways. In some cases, driver MVRs and driving histories are obtained directly from States. Verification is also conducted by obtaining driver records through a commercial provider that does screening for automobile and truck rental companies and insurers. In addition, the FHWA is able to obtain driver histories by querying the Commercial Driver License Information System (CDLIS). The CDLIS is a component of the national CDL program which has as one of its procedures the requirement that States communicate the relevant accident and violation information for out-of-State drivers to the State of their licensing.

The IIHS' comments that jurisdictions ''are not forwarding all the convictions to the primary licensing'' jurisdiction is an acknowledged traffic record problem. However, for CDL drivers this is now an issue subject to State compliance requirements. It is being addressed as part of the overall effectiveness of the CDL program. There are a number of efforts underway addressing the issue of convicting jurisdiction reporting to the licensing jurisdiction, including efforts to increase the awareness of various police organizations and courts regarding the requirements of the CDL

program. The FHWA will continue to vigorously pursue this issue for all licensees.

Determination

After a thorough review of the comments submitted in response to the January 8, 1996, NPRM, the FHWA believes that grandfathering this group of waived drivers to continue operating CMVs in interstate commerce, subject to the operating conditions under § 391.64, is consistent with the public interest and the safe operation of CMVs, in accordance with the Motor Carrier Safety Act of 1984 (49 U.S.C. 31136(e) (1994)).

The FHWA has documented the safe driving performance over a six-year period for the vision waived drivers and over a five-year period for diabetes waived drivers and determined that this group of waived drivers will be allowed to continue driving in interstate commerce after March 31, 1996, based on continuous and sustained safe performance as a group. The underlying basis for this action is the performance data gathered to date and risk analysis performed on this data that show that the continued operation of both waived groups of drivers, who total 2326 as of March 1, 1996, will be consistent with the public interest and safe operation of CMVs. Prior to being admitted into the study, the waiver applicants had to demonstrate a three-year period of safe driving performance (i.e., no chargeable accidents and no more than one serious traffic violation). Since the program began, the data have shown that the driving performance of this group of waived drivers is better than the driving performance of all CMV drivers collectively, based on data obtained from the General Estimates Service (GES). Moreover, each driver in the vision and diabetes waiver programs has been closely monitored, in many cases for three years or more, and the poorest performers have been eliminated. Coupled with their 3-year good driving record preceding the waivers, their continued good driving during the waiver program has earned these drivers individually partial exemption from §§ 391.41(b)(10) and 391.41(b)(3), respectively.

In addition, the FHWA believes that the continued employment of individuals with demonstrated safe driving records is in the public's interest by allowing these individuals to gain employment in occupations of their choice, by promoting economic viability and furthering national policy and legislative goals articulated in both the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1992.

Therefore, the FHWA hereby amends 49 CFR part 391 to grant grandfather rights to all drivers holding a valid Federal vision or diabetes waiver on March 31, 1996. Under the grandfather provision, the FHWA will allow only those drivers who have been granted temporary waivers to participate in the Federal vision and diabetes waiver programs, numbering 2326 as of March 1, 1996, to continue to operate in interstate commerce beyond March 31, 1996, subject to certain operating conditions. This action will provide relief to these drivers who, notwithstanding the demonstrated abilities of the group, would otherwise not be permitted to operate a CMV in interstate commerce. These grandfather provisions are conditional, in order to ensure the continued safe operation of these drivers. In addition to the conditions regarding medical requirements discussed below, the FHWA will monitor the performance of these drivers through periodic checks.

Medical Requirements for Operating Under This Grandfather Provision

The FHWA recognizes that any person's medical or physical condition may deteriorate over time. Consequently, the FHWA will require a physical examination every year under § 391.43, instead of every 2 years as is required of other drivers, as an extra precaution to ensure the continued safe operation of these drivers. Under this provision, the waived drivers, like all other interstate drivers, must be otherwise physically qualified pursuant to § 391.41 of the FMCSRs.

In addition, in this final rule, the FHWA requires the grandfathered vision impaired drivers to obtain an annual vision examination by an ophthalmologist or optometrist indicating that they have been examined within the past two months and that the vision in the better eye is at least 20/40 acuity, corrected or uncorrected. This information must be submitted to the medical examiner at the time of the individual's annual physical qualification examination under part 391 of the FMCSRs.

Similarly, diabetic drivers grandfathered as a result of this action are required to obtain an annual examination by a board certified/eligible endocrinologist who must certify that the driver (1) has been examined within the past two months; (2) is free of insulin reactions; (3) has the ability and has demonstrated willingness to properly monitor and manage his/her diabetes; and (4) does not have a diabetic condition that would adversely affect his or her ability to operate a CMV. An individual is free of insulin reactions if he or she does not have severe hypoglycemia (i.e., episodes of altered consciousness requiring the assistance of another person to regain control) or hypoglycemia unawareness (i.e., the inability to recognize the early symptoms of hypoglycemia), and has less than one documented, symptomatic hypoglycemic reaction per month. These drivers will be required to carry a source of rapidly absorbable glucose and continue to monitor their blood glucose using a portable glucose monitoring device equipped with a computerized memory one hour prior to driving and approximately every four hours while driving. Upon request, the driver must submit his or her blood glucose logs to the endocrinologist and/or the medical examiner or when otherwise directed by an authorized agent of the FHWA. A copy of the endocrinologist's report must be submitted to the medical examiner at the time of the annual physical qualification examination under part 391 of the FMCSRs.

This final rule requires this group of drivers to carry a medical certificate stating: ''Medically qualified by operation of 49 CFR 391.64.'' Drivers who do not provide a copy of the required information from the ophthalmologist/optometrist or the endocrinologist to the medical examiner at the time of their annual physical qualification examinations cannot be recertified to continue driving a CMV in interstate commerce under this grandfather provision.

Technical Amendment

In this final rule, the FHWA also relocates the provision in part 391 granting limited exemptions for intra-city zone drivers. The current provision, required under the Motor Carrier Act of 1988 (49 U.S.C. 31136(f)), is codified as paragraph (d) of 49 CFR 391.2, General Exemptions. This action redesignates the provision, without any substantive change, as § 391.62, where it is more properly included in subpart G, Limited Exemptions. Paragraph (d)(5)(i) of 49 CFR 391.2 is also being deleted as superfluous.

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

The FHWA has determined that this final rule is not a significant regulatory action under Executive Order 12866 or under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rule will be minimal because of its limited application and the small number of

affected drivers. Moreover, this action will not have any permanent effect on any existing safety standard. It will merely continue the status quo by grandfathering some 2,300 drivers who have been operating safely for substantial periods of time. Therefore, a full regulatory evaluation is not required.

The FHWA finds that this final rule is exempt from the 30-day delayed effective date requirement of U.S.C. 553(d) because it ''grants or recognizes an exemption or relieves a restriction.'' Without this action, CMV drivers in the agency's diabetes and vision waiver studies would no longer be qualified to operate in interstate commerce after March 31, 1996, the date on which these programs would otherwise end. This final rule enables these drivers to continue operations, subject to certain operating and monitoring conditions, granting an exemption to the vision and diabetes standards of 49 C.F.R. 391.41 that would otherwise soon apply to these drivers.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, 5 U.S.C. 601–612, the FHWA has evaluated the effects of this final rule on small entities. The FHWA believes that this action will not have a significant economic impact on a substantial number of small entities because this action is directed solely at a limited number and narrowly defined population of CMV drivers operating in interstate commerce. This action will not cause a major increase in costs or prices and, therefore, will not have a significant effect on the Nation's economy.

Executive Order 12612 (Federalism Assessment)

This rulemaking will amend 49 CFR part 391 pertaining to the qualification of CMV drivers. This action will allow CMV drivers who currently hold waivers from the Federal vision and diabetes requirements to continue operating in interstate commerce after March 31, 1996. This rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. Nothing in this rulemaking will directly preempt any State law or regulation. This rulemaking will not limit the policymaking discretion of the States. Therefore, the FHWA has determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a separate Federalism Assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This program does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, Pub. L. 104–13.

Regulation Identification Number

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

List of Subjects in 49 CFR Part 391

Driver qualifications, Highway safety, Motor carriers, Reporting and recordkeeping requirements, Safety, Transportation.

Issued on: March 20, 1996.

Rodney E. Slater,

Federal Highway Administration.

In consideration of the foregoing, the FHWA amends title 49, CFR, subtitle B, chapter III, part 391 as set forth below:

PART 391—QUALIFICATIONS OF DRIVERS

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

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

§ 391.2 [Redesignated as § 391.62]

2. Part 391 is amended by redesignating § 391.2 as § 391.62 and revising it to read as follows:

§ 391.62 Limited exemptions for intra-city zone drivers.

The provisions of §§ 391.11(b)(1) and 391.41(b)(1) through (b)(11) do not apply to a person who:

(a) Was otherwise qualified to operate and operated a commercial motor vehicle in a municipality or exempt intracity zone thereof throughout the one-year period ending November 18, 1988;

(b) Meets all the other requirements of this section;

(c) Operates wholly within the exempt intracity zone (as defined in 49 CFR 390.5);

(d) Does not operate a vehicle used in the transportation of hazardous materials in a quantity requiring placarding under regulations issued by the Secretary under 49 U.S.C. chapter 51.; and

(e) Has a medical or physical condition which:

(1) Would have prevented such person from operating a commercial motor vehicle under the Federal Motor Carrier Safety Regulations contained in this subchapter;

(2) Existed on July 1, 1988, or at the time of the first required physical examination after that date; and

(3) The examining physician has determined this condition has not substantially worsened since July 1, 1988, or at the time of the first required physical examination after that date.

3. Section 391.64 is added to read as follows:

§ 391.64 Grandfathering for certain drivers participating in vision and diabetes waiver study programs.

(a) The provisions of § 391.41(b)(3) do not apply to a driver who was a participant in good standing on March 31, 1996, in a waiver study program concerning the operation of commercial motor vehicles by insulin-controlled diabetic drivers; *provided*:

(1) The driver is physically examined every year, including an examination by a board-certified/eligible endocrinologist attesting to the fact that the driver is:

(i) Otherwise qualified under § 391.41;

(ii) Free of insulin reactions (an individual is free of insulin reactions if that individual does not have severe hypoglycemia or hypoglycemia unawareness, and has less than one documented, symptomatic hypoglycemic reaction per month);

(iii) Able to and has demonstrated willingness to properly monitor and manage his/her diabetes; and

(iv) Not likely to suffer any diminution in driving ability due to his/her diabetic condition.

(2) The driver agrees to and complies with the following conditions:

(i) A source of rapidly absorbable glucose shalll be carried at all times while driving;

(ii) Blood glucose levels shall be self-monitored one hour prior to driving and at least once every four hours while driving or on duty prior to driving using a portable glucose monitoring device equipped with a computerized memory;

(iii) Submit blood glucose logs to the endocrinologist or medical examiner at the annual examination or when otherwise directed by an authorized agent of the FHWA;

(iv) Provide a copy of the endocrinologist's report to the medical examiner at the time of the annual medical examination; and

(v) Provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State or local enforcement official.

(b) The provisions of § 391.41(b)(10) do not apply to a driver who was a participant in good standing on March 31, 1996, in a waiver study program concerning the operation of commercial motor vehicles by drivers with visual impairment in one eye; *provided*:

(1) The driver is physically examined every year, including an examination by an ophthalmologist or optometrist attesting to the fact that the driver:

(i) Is otherwise qualified under § 391.41; and

(ii) Continues to measure at least 20/40 (Snellen) in the better eye.

(2) The driver provides a copy of the ophthalmologist or optometrist report to the medical examiner at the time of the annual medical examination.

(3) The driver provides a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized federal, state or local enforcement official.

3. Section 391.43 is amended by redesignating paragraphs (e), (f) and (g) as paragraphs (f), (g) and (h), respectively; by adding a new paragraph (e); by revising the text preceding the Instructions in newly designated paragraph (f) and the text preceding the Certificate in newly designated paragraph (h); and by amending the medical examiner's certificate form at the end of newly designated paragraph (h) by adding a new listing after the words ''_____ Qualified only when wearing a hearing aid'' to read as follows:

§ 391.43 Medical examination; certificate of physical examination.

* * * * *

(e) Any driver operating under a limited exemption authorized by § 391.64 shall furnish the medical examiner with a copy of the annual medical findings of the endocrinologist, ophthalmologist or optometrist, as required under that section. If the medical examiner finds the driver qualified under the limited exemption in § 391.64, such fact shall be noted on the Medical Examiner's Certificate.

(f) The medical examination shall be performed, and its results shall be recorded, substantially in accordance with the following instructions and examination form. Existing forms may be used until current printed supplies are depleted or until March 31, 1997.

* * * * *

(h) The medical examiner's certificate shall be in accordance with the following form. Existing forms may be used until current printed supplies are depleted or until March 31, 1997, provided that the medical examiner writes down in pen and ink any applicable information contained in the following form: MEDICAL EXAMINER'S CERTIFICATE

* * * * *

__Qualified by operation of 49 CFR 391.64

* * * * *

4. In § 391.45, paragraph (b)(2) is revised to read as follows:

§ 391.45 Persons who must be medically examined and certified.

* * * * *

(b) * * *

(2) Any driver authorized to operate a commercial motor vehicle only with an exempt intracity zone pursuant to § 391.62, or only by operation of the exemption in § 391.64, if such driver has not been medically examined and certified as qualified to drive in such zone during the preceding 12 months; and

* * * * *

[FR Doc. 96–7226 Filed 3–21–96; 12:03 am]

BILLING CODE 4910–22–P

federal register

Tuesday
March 26, 1996

Part XII

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

To the Congress of the United States

In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report five proposed rescissions of budgetary resources, totaling $50 million. These rescission proposals affect the Department of Defense.

William J. Clinton

The White House,

March 13, 1996.

BILLING CODE 3110–01–P

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

Rescission No	ITEM	Budgetary Resources
	Department of Defense:	
	Military Construction:	
R96-21	Military construction, Army	10,000
R96-22	Military construction, Navy	8,000
R96-23	Military construction, Air Force	15,000
R96-24	Military construction, Defense-wide	13,000
R96-25	Military construction, Air National Guard	4,000
	Total, rescissions	50,000

R96–21

DEPARTMENT OF DEFENSE

MILITARY CONSTRUCTION

Military construction, Army

Of the funds made available under this heading in Public Law 104–32, $10,000,000 are rescinded.

Rescission Proposal No. R96-21

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority..... (P.L. 104-32) $ 633,814,000
BUREAU: Military Construction	Other budgetary resources.. $ 2,663,432,000
Appropriations title and symbol: Military construction, Army 216/02050	Total budgetary resources... $ 3,297,246,000
	Amount proposed for rescission..... $ 10,000,000
OMB identification code: 21-2050-0-1-051	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☒ Multi-year: September 30, 2000 (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This appropriation provides for acquisition, construction, and installation of, and equipment for, temporary or permanent public works, military installations, facilities, and real property for the Army as currently authorized by law, including personnel in the Army Corps of Engineers. This proposal would rescind appropriations that are no longer needed because inflation for FY 1996 is less than anticipated.

ESTIMATED PROGRAM EFFECT: The Department of the Army's construction program would not be changed by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

1996 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001
685,325	683,745	-1,580	-3,000	-2,500	-1,700	-680	-300

R96–22

DEPARTMENT OF DEFENSE

MILITARY CONSTRUCTION

Military construction, Navy

Of the funds made available under this heading in Public Law 104–32, $8,000,000 are rescinded.

Rescission Proposal No. R96-22

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority..... (P.L. 104-32) $ 554,636,000
BUREAU: Military Construction	Other budgetary resources.. $ 737,907,000
Appropriations title and symbol: Military construction, Navy 176/01205	Total budgetary resources... $ 1,292,543,000
	Amount proposed for rescission..... $ 8,000,000
OMB identification code: 17-1205-0-1-051	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☒ Multi-year: September 30, 2000 (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This appropriation provides for acquisition, construction, and installation of, and equipment for, temporary or permanent public works, naval installations, facilities, and real property for the Navy as currently authorized by law, including personnel in the Naval Facilities Engineering Command. This proposal would rescind appropriations that are no longer needed because inflation for FY 1996 is less than anticipated.

ESTIMATED PROGRAM EFFECT: The Department of the Navy's construction program would not be changed by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

1996 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001
522,296	521,416	-880	-3,040	-2,080	-1,200	-400	-240

R96–23

DEPARTMENT OF DEFENSE

MILITARY CONSTRUCTION

Military construction, Air Force

Of the funds made available under this heading in Public Law 104–32, $15,000,000 are rescinded.

Rescission Proposal No. R96-23

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority..... (P.L. 104-32) $ 578,469,000
BUREAU: Military Construction	Other budgetary resources.. $ 452,196,000
Appropriations title and symbol: Military construction, Air Force 576/03300	Total budgetary resources... $ 1,030,665,000
	Amount proposed for rescission..... $ 15,000,000
OMB identification code: 57-3300-0-1-051	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☒ Multi-year: September 30, 2000 (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This appropriation provides for acquisition, construction, and installation of, and equipment for, temporary or permanent public works, military installations, facilities, and real property for the Air Force as currently authorized by law. This proposal would rescind appropriations that are no longer needed because inflation for FY 1996 is less than anticipated.

ESTIMATED PROGRAM EFFECT: The Air Force's construction program would not be changed by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

1996 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001
811,821	810,561	-1,260	-4,050	-4,350	-2,880	-1,500	-750

R96–24

DEPARTMENT OF DEFENSE

MILITARY CONSTRUCTION

Military construction, Defense-wide

Of the funds made available under this heading in Public Law 104–32, $13,000,000 are rescinded.

Rescission Proposal No. R96-24

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority..... (P.L. 104-32) $ 616,836,000
BUREAU: Military Construction	Other budgetary resources.. $ 444,559,000
Appropriations title and symbol: Military construction, Defense-wide 976/00500	Total budgetary resources... $ 1,061,395,000
	Amount proposed for rescission..... $ 13,000,000
OMB identification code: 97-0500-0-1-051	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☒ Multi-year: September 30, 2000 (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This appropriation provides for acquisition, construction, and installation of, and equipment for, temporary or permanent public works, installations, facilities, and real property for activities and agencies of the Department of Defense (other than the military departments), as currently authorized by law. This proposal would rescind appropriations that are no longer needed because inflation for FY 1996 is less than anticipated.

ESTIMATED PROGRAM EFFECT: The Defense Department's construction program would not be changed by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

1996 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001
581,747	580,967	-780	-4,550	-4,160	-1,560	-910	-520

R96–25

DEPARTMENT OF DEFENSE

MILITARY CONSTRUCTION

Military construction, Air National Guard

Of the funds made available under this heading in Public Law 104–32, $4,000,000 are rescinded.

Rescission Proposal No. R96-25

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority..... (P.L. 104-32) $ 164,572,000
BUREAU: Military Construction	Other budgetary resources.. $ 217,220,000
Appropriations title and symbol: Military construction, Air national guard 576/03830	Total budgetary resources... $ 381,792,000
	Amount proposed for rescission..... $ 4,000,000
OMB identification code: 57-3830-0-1-051	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☒ Multi-year: September 30, 2000 (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This appropriation provides for construction, acquisition, expansion, rehabilitation, and conversion of facilities for the training and administration of the Air National Guard, and contributions as authorized by chapter 133 of title 10, United States Code, and military construction authorization Acts. This proposal would rescind appropriations that are no longer needed because inflation for FY 1996 is less than anticipated.

ESTIMATED PROGRAM EFFECT: The Air National Guard's construction program would not be changed by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

1996 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001
266,684	266,628	-56	-2,160	-1,040	-480	-120	-56

[FR Doc. 96–7215 Filed 3–25–96; 8:45 am]
BILLING CODE 3110–01–C

federal register

Tuesday
March 26, 1996

Part XIII

Department of Education

Even Start Statewide Family Literacy Initiative Grants; Notice Inviting Applications for New Awards With Fiscal Year (FY) 1995 Funds; Notice

DEPARTMENT OF EDUCATION

[CFDA NO.: 84.314A]

Even Start Statewide Family Literacy Initiative Grants; Notice Inviting Applications for New Awards With Fiscal Year (FY) 1995 Funds

AGENCY: Department of Education.

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: To enable States to plan and implement statewide family literacy initiatives under the Even Start Family Literacy Program. Initiative activities must be conducted through a consortium of State, local, and other institutions, organizations, or agencies.

Eligible Applicants: State office or agency.

Deadline for Transmittal of Applications: May 10, 1996

Deadline for Intergovernmental Review: July 9, 1996

Available Funds: $1,000,000.

Note: Under this program, States receiving grants must make available non-Federal contributions in an amount equal to not less than the Federal funds provided under the grant, as required by section 1202(c)(2) of the Elementary and Secondary Education Act (ESEA).

Estimated Range of Awards: $75,000–$250,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 5.

Note: This Department is not bound by any estimates in this notice.

Project Period: Up to 18 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 75 (Direct Grant Programs).

(2) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(4) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(5) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR Part 82 (New Restrictions on Lobbying).

(7) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

Description of Program: States receiving funds under this grant authority will use these funds to plan and implement statewide family literacy initiatives under the Even Start Family Literacy Program to coordinate and integrate existing Federal, State, and local literacy resources including resources available under Even Start, the Adult Education Act, Head Start, and the Family Support Act of 1988. Initiative activities must be conducted through a consortium of State, local, and other institutions, organizations, or agencies. The State must make available non-Federal contributions in an amount not less than the Federal funds provided under the grant for the costs to be incurred by the consortium in carrying out the activities for which the grant is awarded.

Waiver of Reporting Requirement: Under the EDGAR, an applicant generally must submit an annual performance report to the Department. (See 34 CFR 75.720 and 80.40). However, in the interest of reducing burden at the State level, the Secretary has determined that a performance report is unnecessary until the end of the project period (up to 18 months), and therefore waives the requirement for a performance report at the end of the first year (unless the end of the first year coincides with the end of the project period). This waiver is in accordance with the Secretary's authority under these regulations.

Selection Criteria: (a)(1) The Secretary uses the following selection criteria to evaluate applications for grants under this competition.

(2) The maximum composite score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The Criteria.*—(1) *Meeting the purposes of the authorizing statute.* (20 points). The Secretary reviews each application to determine how well the project will meet the purpose of section 1202(c) of the ESEA (Even Start Statewide Family Literacy Initiatives grants), which is to enable States to plan and implement statewide family literacy initiatives, through a consortium of entities, to coordinate and integrate existing Federal, State, and local literacy resources consistent with the purpose of the Even Start Family Literacy Program (Part B of Title I of the ESEA).

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in section 1202(c) of the ESEA, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of Operation.* (35 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purposes of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(4) *Quality of key personnel.* (7 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(4)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of the nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (10 points) The Secretary reviews each application to

determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review of Federal Programs: This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list published in the Federal Register on March 31, 1995 (60 FR 16714).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA #84.314A, U.S. Department of Education, Room 6300, 600 Independence Avenue, SW, Washington, DC 20202.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS. INSTRUCTIONS FOR TRANSMITTAL OF APPLICATIONS:*

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: Patricia McKee (CFDA #84.314A), Compensatory Education Programs, Room 3633, Regional Office Building #3, 7th and D Streets, SW, Washington, DC 20202–4725 or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: Patricia McKee (CFDA #84.314A), Compensatory Education Programs, Room 3633, Regional Office Building #3, 7th and D Streets, SW, Washington, DC 20202–4725.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If any application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms: The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized and submitted. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

Part III: Application Narrative.

Additional Materials: Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (Note: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL-A). (See *amendments by 61* Federal Register 1412 (1/19/96).)

Notice to all Applicants (Section 427 of the General Education Provisions Act).

An applicant may submit information on photostatic copies of the application, budget forms, assurances, and certifications. However, the application form, assurances, and certifications must each have an original signature. No grant may be awarded unless a completed application form, including the signed assurances and certifications, have been received.

For Further Information Contact: Patricia McKee, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue, SW., (4400, Portals), Washington, DC 20202–6132. Telephone (202) 260–0991. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server

at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Program Authority: 20 U.S.C. section 6362(c).

Dated: March 18, 1996.

Gerald N. Tirozzi,

Assistant Secretary, Elementary and Secondary Education.

BILLING CODE 4000–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 3 1 4A

TITLE: Even Start Statewide Family Literacy Initiative Grants

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE_____

b NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/95

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Instructions for ED Form No. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A—Budget Summary

U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1–11.

Lines 1–11, columns (a)–(e):
For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1–11, column (f):
Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)–(e):
Show the total budget request for each project year for which funding is requested.

Line 12, column (f):
Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B—Budget Summary

Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1–11 of Section B.

Lines 1–11, columns (a)–(e):
For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1–11, column (f):
Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)–(e):
Show the total matching or other contribution for each project year.

Line 12, columns (f):
Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C—Other Budget Information

Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

Instructions for Part III Application Narrative

Before preparing the Application Narrative an applicant should read carefully the description of the program and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a summary of the proposed project;

2. Describe the proposed project in light of the selection criteria in the order in which the criteria are listed in this application package; and

3. Include any other pertinent information that might assist the Secretary in reviewing the application package, including—

(a) A description of the activities and services for which assistance is sought;

(b) A comprehensive statement of how the applicant will plan and implement a statewide family literacy initiative in accordance with section 1202(c) of the ESEA; and

(c) An assurance that the plan will be developed in consultation with the State, local, and other institutions, organizations, and agencies that will form the consortium and carry out the plan.

4. Include, in the application budget, a description of the non-Federal contributions that the State will make, in an amount not less than the Federal funds awarded under the grant, for the costs to be incurred by the consortium in carrying out the grant activities.

5. Provide the following in response to the attached ''Notice to all Applicants'': (1) a reference to the portion of the application in which information appears as to how the applicant is addressing steps to promote equitable access and participation, or (2) a separate statement that contains that information.

6. For any applicant *other* than the State educational agency, include a copy of the signed set of assurances specified in section 14306(a) of the ESEA (20 USC 8856(a)) that the applicant has filed with its SEA and that is applicable to this application.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 20 double-spaced, typed pages (on one side only), although the Secretary will consider applications of greater length. The Department has found that successful applications for similar programs generally meet this page limit.

Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is 1810–0590. The time required to complete this information collection is estimated to average 7½ hours (or minutes) per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202–4651. If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Patricia McKee, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue, SW, Room 4400, Portals Building, Washington D.C. 20202–6132.

BILLING CODE 4000–01–P

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3),

Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known*:

Congressional District, *if known*:

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, *if known*:

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable*: _____

8. Federal Action Number, *if known*:

9. Award Amount, *if known*:
$

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply)*:
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply)*:
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

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Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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[FR Doc. 96–7210 Filed 3–25–96; 8:45 am]
BILLING CODE 4000–01–P

federal register

Tuesday
March 26, 1996

Part XIV

Department of Education

Education of Individuals With Disabilities: Personnel Training; Notice

DEPARTMENT OF EDUCATION

Training Personnel for the Education of Individuals With Disabilities—Grants for Personnel Training

AGENCY: Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Secretary proposes a priority for the Training Personnel for the Education of Individuals with Disabilities—Grants for Personnel Training program administered by the Office of Special Education and Rehabilitative Services (OSERS) under the Individuals with Disabilities Education Act. The Secretary may use this priority in Fiscal Year 1996 and subsequent years. The Secretary takes this action to focus Federal assistance on identified needs to improve outcomes for children with disabilities. This proposed priority is intended to ensure wide and effective use of program funds.

DATES: Comments must be received on or before April 25, 1996.

ADDRESSES: All comments concerning the proposed priority should be addressed to: Linda Glidewell, U.S. Department of Education, 600 Independence Avenue SW., Room 3524, Switzer Building, Washington, D.C. 20202–2641.

FOR FURTHER INFORMATION CONTACT: Scott Brown, U.S. Department of Education, 600 Independence Avenue SW., Room 3522, Switzer Building, Washington, D.C. 20202–2641.

SUPPLEMENTARY INFORMATION: The Individuals with Disabilities Education Act (IDEA) directs the Secretary to develop and implement a plan for providing outreach services to minority entities and underrepresented populations to assist them in participating more fully in the discretionary programs under the Act (section 610(j)(2)(C)).

This proposed priority supports the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

The Secretary will announce the final priority in a notice in the Federal Register. The final priority will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the content of the final priority, and the quality of the applications received. Further, the priority could be affected by enactment of legislation reauthorizing this program. The publication of this proposed priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priority does not solicit applications. A notice inviting applications under this competition will be published in the Federal Register concurrent with or following publication of the notice of final priority.

Priority

Under 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this absolute priority.

Proposed Absolute Priority—Outreach Services to Minority Entities to Expand Research Capacity

Background

The Congress has found that the Federal Government must be responsive to the growing needs of an increasingly diverse society and that a more equitable distribution of resources is essential for the Federal Government to meet its responsibility to provide an equal educational opportunity for all individuals. The Congress has concluded that the opportunity for full participation in awards for grants, cooperative agreements and contracts by Historically Black Colleges and Universities (HBCUs), other institutions of higher education whose minority enrollment is at least 25% (OMIs) and other eligible institutions as defined under section 312 of the Higher Education Act of 1965 (OEIs) is essential if we are to obtain greater success in the education of children from diverse backgrounds in special education.

This priority focuses on assisting HBCUs, OMIs and OEIs to prepare scholars for careers in research on special education and related services. This preparation shall consist of engaging both faculty and students at HBCUs, OMIs and OEIs in special education research activities. The activities focus on an area of critical emerging need which has material application in today's changing environment and will likely be the subject of future research efforts—*the special education of children in urban and high poverty schools with predominantly minority enrollments.* By building a cadre of experienced researchers on this important topic, the chances for full participation in awards for grants, cooperative agreements and contracts by HBCUs, OMIs and OEIs will be increased.

The association between socioeconomic status and enrollment in special education has been well documented. Available data from the National Longitudinal Transition Study (NLTS) show that 68% of students in special education live in a household where the income is less than $25,000 per year versus 39% of the general population of youth.

The problem of this association is heightened in urban school districts and, to a lesser extent, rural districts. NLTS data reveal that only 34% of students in special education live in suburban school districts compared to 48% of all youth. Data from the Office for Civil Rights indicate that 30% of all inner-city students live in poverty compared to 18% of students in non-inner city areas. Moreover, findings from the National Longitudinal Transition Study indicate that 47% of urban youth with disabilities live in households with an annual income of less than $12,000 (in 1986 dollars) compared to 34% of rural and 19% of suburban youth with disabilities (Valdes et al., 1990).

Urban school districts face a variety of challenges in meeting the educational needs of their students. Their schools often have high per student costs and limited financial resources. Their students are disproportionately poor and the population of individuals with limited English proficiency is among the fastest growing populations with special needs in some of these districts. This disproportionate representation of poor children in special education is also likely to be uniquely influenced by culturally diverse and urban settings, posing both opportunities and problems in the provision of special education services.

Priority

The Assistant Secretary establishes an absolute priority for a project to design and conduct a program of research by individuals who show promise of contributing to the program improvement activities authorized under the Individuals with Disabilities Education Act (IDEA). Each research activity of the program must implement the Congress' direction in section 610(j)(2) to support outreach activities to HBCUs, OMIs and OEIs to increase their participation in competition for research, demonstration and outreach grants, cooperative agreements and contracts funded under the IDEA. Activities shall include:

(1) Conducting research activities at HBCUs, OMIs and OEIs as explained

below that link scholars at HBCUs, OMIs and OEIs with researchers at institutions with an established research capacity in a mentoring relationship to develop both individual and institutional research capacity at those HBCUs, OMIs and OEIs with a demonstrated need for capacity development; and

(2) Providing linkages between HBCUs, OMIs and OEIs with a demonstrated need for capacity development and institutions with an established research capacity to provide opportunities for researchers at those HBCUs, OMIs and OEIs to develop first hand experience in the grants and contracts application process.

All research activities must be conducted for the purpose of capacity building. The research program must include one or more projects that are focused on issues related to improving the delivery of special education services and educational results for children with disabilities in urban and high poverty schools with predominantly minority enrollments. The program must examine the association between minority status and identification for, evaluation for and placement in special education. Other possible research topics may include:

(1) Effective intervention strategies that make a difference in the provision of a Free Appropriate Public Education (FAPE);

(2) Practices to promote the successful inclusion of children with disabilities in a least restrictive environment (LRE);

(3) Strategies for establishing high expectations for children with disabilities and increasing their participation in the general curriculum provided to all children;

(4) Increasing effective parental participation in the educational process, especially for poor parents, minority parents, and parents with limited English proficiency;

(5) Effective disciplinary approaches, including behavioral management strategies, for ensuring a safe and disciplined learning environment;

(6) The effect of school-wide projects conducted under Title 1 of the Elementary and Secondary Education Act on the delivery of special education; or

(7) Effective practices for promoting the coordination of special education services with health and social services for children with disabilities and their families.

The program shall ensure that findings are communicated in appropriate formats for researchers. The program shall also ensure that if findings are of importance to other audiences, such as teachers, administrators and parents, they are made available to Department of Education's technical assistance, training and dissemination projects for distribution to those audiences.

Projects must demonstrate experience and familiarity in research on children with disabilities in urban and high poverty schools with predominantly minority enrollments. The project must also demonstrate experience in capacity development in special education research, as well as a thorough understanding of the strengths and needs of HBCUs, OMIs and OEIs.

The project must budget for two trips annually to Washington, DC for: (1) A two-day Research Project Directors' meeting; and (2) an additional meeting to meet and collaborate with the project officer of the Office of Special Education Programs (OSEP) and with other relevant OSEP funded projects. The project must also coordinate activities with the ongoing Policy Research Institute funded by OSEP.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 3521, 300 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Program Authority: 20 U.S.C. 1431.

(Catalog of Federal Domestic Assistance Number 84.029, Training Personnel for the Education of Individuals with Disabilities Program)

Dated: March 20, 1996.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 96–7211 Filed 3–25–96; 8:45 am]

BILLING CODE 4000–01–P

federal register

Tuesday
March 26, 1996

Part XV

Department of Education

Training Personnel for the Education of Individuals With Disabilities; Grants for Personnel Training; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1996; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.029G]

Training Personnel for the Education of Individuals With Disabilities; Grants for Personnel Training; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1996

PURPOSE OF PROGRAM: The purpose of Training Personnel for the Education of Individuals with Disabilities Program—Grants for Personnel Training is to increase the quantity and improve the quality of personnel available to serve infants, toddlers, children and youth with disabilities.

ELIGIBLE APPLICANTS: Eligible applicants are institutions of higher education, and other appropriate nonprofit agencies.

APPLICABLE REGULATIONS: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 318.

In some instances, the description of the absolute priority identified below differs from applicable regulatory provisions in 34 CFR 318. These changes, as well as any supplementary information provided under the priority that is not found in the regulations, represent interpretative guidance and are provided for purposes of clarification. These interpretations do not substantively change the regulations.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

PRIORITY: Under 34 CFR 75.105(c)(3), and 34 CFR 318, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only those applications that meet this absolute priority:

Absolute Priority—Grants for Preservice Personnel Training (84.029G).

This priority supports projects designed to provide preservice preparation of personnel who serve infants, toddlers, children and youth with disabilities. Projects must address either:

(1) The development of new programs to establish expanded capacity for quality preservice training; or

(2) The improvement of existing programs designed to increase the capacity and quality of preservice training.

In addition, projects must address one or more of the following training components:

(1) *Preparation of Personnel for Careers in Special Education.* This component supports preservice preparation of personnel for careers in special education. Preservice training includes additional training for currently employed teachers seeking additional degrees, certifications, or endorsements. Training may occur at one or more of the following levels: baccalaureate, master's, or specialist. Under this component, ''personnel'' includes special education teachers, speech-language pathologists, audiologists, adapted physical education teachers, vocational educators, and instructive and assistive technology specialists.

(2) *Preparation of Related Services Personnel.* This component supports preservice preparation of individuals to provide developmental, corrective, and other supportive services that assist children and youth with disabilities to benefit from special education. These include paraprofessional personnel, therapeutic recreation specialists, school social workers, health service providers, physical therapists, occupational therapists, school psychologists, counselors (including rehabilitation counselors), interpreters, orientation and mobility specialists, respite care providers, art therapists, volunteers, physicians, and other related services personnel. For purposes of this component, the Department considers the term ''interpreters'' to be limited to interpreters for the deaf.

(i) Projects to train personnel identified as special education personnel under training component (1) are not appropriate for purposes of this component, even if those personnel may be considered related services personnel in other settings (e.g., speech language pathologists).

(ii) This component is not designed for general training. Projects must include inducements and preparation to increase the probability that graduates will direct their efforts toward supportive services to special education. For example, a project in occupational therapy (OT) might support a special focus in pediatric or juvenile psychiatric OT; support those students whose career goal is OT in the school; or provide for practica, and internships in school settings.

(3) *Training Early Intervention and Preschool Personnel.* This component supports projects that are designed to provide preservice preparation of personnel who serve infants, toddlers, and preschool children with disabilities, and their families. Personnel may be prepared to provide short-term services or long-term services that extend into a child's school program. The proposed training program must have a clear and limited focus on the special needs of children within the age range from birth through five, and must include consideration of family involvement in early intervention and preschool services. Training programs under this priority must have a significant interdisciplinary focus.

Applications Available: April 23, 1996.

Deadline for Transmittal of Applications: June, 10, 1996.

Deadline for Intergovernmental Review: August 10, 1996.

Estimated Number of Awards: 23.

Estimated Range of Awards: $100,000 to $480,000.

Project Period: Up to 36 months.

Available Funds: In fiscal year 1996, approximately $6,750,000 will be available to support an estimated 23 projects (grant awards) under this absolute priority (competition). While the total average award is estimated at $290,000, it is anticipated that the average range per component would be $100,000 to $160,000. Multi-year projects will be level funded unless there are increases in costs attributable to significant changes in activity level, and funds are available.

The Congress has not yet enacted a fiscal year 1996 appropriation for the Department of Education. The Department is publishing this notice in order to give potential applicants adequate time to prepare applications. The estimate of the amount of funds that will be available for this competition is based, in part, on the President's 1996 budget request and, in part, on the level of funding available for fiscal year 1995.

Potential applicants should note, however, that the Congress is considering proposals to reduce funding in 1996 for the Training Personnel for the Education of Individuals with Disabilities Program administered by the Department. Final action on the 1996 appropriation may require the Department to cancel this competition or to significantly reduce the number or size of grant awards that will be made under the competition announced in this notice.

Note: The Department of Education is not bound by any estimates in this notice.

WAIVER OF RULEMAKING: It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed priorities in accordance with the Administrative Procedure Act (5 U.S.C. 553). However, this application notice restates existing priorities in 34 CFR 318. In addition, the Secretary has determined, pursuant to 5 U.S.C.

553(b)(A), that rulemaking requirements do not apply to the changes to applicable regulatory provisions contained in this notice. These changes reflect the Secretary's interpretation of existing regulations and are provided solely for purposes of clarification.

FOR APPLICATIONS AND GENERAL INFORMATION CONTACT: Marlene Spencer, U.S. Department of Education, 600 Independence Avenue, S.W., Switzer Building, Room 3072, Washington, D.C. 20202–2651. Telephone: (202) 205–9058. FAX: (202) 205–9070. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953. Internet: Marlene__Spencer@ed.gov

FOR TECHNICAL INFORMATION CONTACT: Martha B. Bokee, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3078, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–5509. FAX: (202) 205–9070. Internet: Martha__Bokee@ed.gov

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases); or on the World Wide Web at http://www.ed.gov/money.html However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Program Authority: 20 U.S.C. 1431.

Dated: March 20, 1996.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 96–7212 Filed 3–25–96; 8:45 am]

BILLING CODE 4000–01–P

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Federal Register

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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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Occupational safety and health standards, etc.:
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LIST OF PUBLIC LAWS

This is a list of public bills from the 104th Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as ''slip laws'') from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.J. Res. 165/P.L. 104–118

Making further continuing appropriations for the fiscal year 1996, and for other purposes. (Mar. 22, 1996; 110 Stat. 829)

Last List March 22, 1996